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- 국내입양인연대 / Domestic Adoptees Solidarity
- 한국미혼모가족협회 / Korean Unwed Mothers' Families Support Association
- 변화된미래를 만드는 미혼모협회인 트리 / Organization of Unwed Moms for Changing the Future
- 한국미혼모지원네트워크 / Korean Unwed Mothers Support Network
- 더나은 입양을 실천하는 입양부모네트워크 / Adoptive Parents' Network for Better Adoption Practice
- 입양연대회의 / Adoption Solidarity Forum



입양진실 국제 컨퍼런스:

인류에 반하는 범죄 강제실종과 강제 입양

본 자료집은 한글본, 영문본, 불어본으로 구성되어있습니다

The conference proceedings are provided in three languages, Korean, English and French

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입양진실 국제 컨퍼런스

인류에 반하는 범죄 강제실종과 강제 입양

- 일시: 2025년 11월 26일(수) 14:00-17:30
- 주관 - (사)뿌리의집, 덴마크 진상규명 그룹, 아동권리연대

장소: 국회 국회의원회관 2간담회의실

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	개회사 - Peter MØLLER ((사)뿌리의집 공동 대표, 덴마크 한국인 진상규명 그룹)
	환영사 - 김도현 ((사)뿌리의집 공동 대표), 조민호 (아동권리연대 대표)
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강제실종 피해 생존자	
14:15-15:15	좌장 - 이형숙 (국가폭력 피해법 국민연대 공동집행위원)
	전봉수: 희망원에 빼앗긴 24년: 나는 희망원에 가고싶지 않았다 Marie Louise WANG: 사망이라 선언된 뒤 해외로 입양된 나: 진실을 찾는 여정 Aurélie TOUVÉ: 강제 실종으로서의 입양: 프랑스로 입양된 한 한국인 아동의 증언 송용금: 입양인지도 모른 채, 아이 손을 놓쳤어요
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	이행기 정의와 법학방법론: 사실인정과 입증책임을 중심으로: 이재승 (건국대학교 법학대 교수)
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	Olivier de FROUVILLE (파리-판테온 대학 교수, 유엔 강제실종위원회 부위원장)
종합토론	
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	1. 장완익 변호사 (법무법인 해마루)
	2. 복지부
	3. 행안부
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등록 및 개최

개회사



Peter MØLLER, (사)뿌리의집 공동 대표, 덴마크 한국인 진상규명 그룹

2025년 3월 26일, 진실화해위원회는 한국에서 이루어진 해외입양에 관한 첫 번째 결론을 발표하였습니다. 보고서는 한국의 해외입양 제도가 헌법에 위배되었으며, 대규모의 중대한 인권침해가 있었음을 명확히 밝혔습니다.

위원회는 보고서에서 입양인의 신원과 출생 배경 정보가 조직적으로 조작되었음을 드러냈습니다. 입양인의 친생부모로부터 적법한 동의가 존재하지 않거나 무효였으며, 빈곤을 이유로 한 허위 서사와 입양인 및 친생가족에 관한 조작된 정보가 작성되었습니다.

또한 위원회는 아동복지시설과 기관들이 Holt, KSS 등 국가 공인 민간 입양기관과 결탁하여 무자비한 공급망 역할을 수행하였으며, 아이가 없는 부부들의 증가하는 수요를 충족시키기 위해 국제적 아동 공급자로 기능하였음을 밝혔습니다.

위원회는 독재정권 시기 형제원, 희망원, 천성원 등 한국의 수용소·강제수용시설에서 수십 년간 아동과 성인이 강제노동, 비인간적 처우, 폭력, 성적·신체적 학대에 노출된 가장 참혹한 인권침해 사례들을 보고서에 기록하였습니다.

이러한 시설에서 강제노동에 적합하지 않다고 판단된 아이들은 입양을 통해 해외로 보내졌습니다. 그 과정에서 아이들의 신원은 입양 산업이 운영하는 시설에서 세탁되었고, 한국과 해외의 이른바 ‘입양기관’이라는 이름의 상업적 브로커들에 의해 미국, 덴마크, 노르웨이, 호주 등으로 보내졌습니다.

입양인의 친생부모들은 자녀의 운명을 알지 못합니다. 우리 입양인들 역시 우리의 진정한 뿌리를 알지 못합니다.

한국과 국제 입양 산업은 진실을 알고 있었지만, 수십 년 동안 입양은 신의 뜻이며 아이가 입양을 통해 새로운 기독교적 삶으로 다시 태어난다는 서사를 교묘히 구축하여 세계를 기만해 왔습니다.

유럽에서 입양 산업은 오랫동안 전세계의 빈곤한 아이들이 구조를 기다리고 있으며, 부유하고 선의를 가진 무자녀 부부들이 그들을 구할 수 있다는 이야기를 만들어냈습니다. ‘가족 형성’이라는 명분 아래 만들어진 이러한 허위 서사는 다른 가족과 아이들의 가족 형성권을 박탈해 왔습니다.

한국에서 입양은 보건·복지 분야의 문제로 취급되어 왔으며, 수용국에서는 상속·가족법의 문제로 다루어져 왔습니다. 그러나 결코 기본적인 시민권과 인권의 문제로 다뤄진 적은 없습니다. 한국 내 정치인들과 국제 언론이 여러 차례 이러한 국제입양의 합법성과 윤리적 문제를 제기했으나, 그 목소리는 억압되고 침묵당해 왔습니다.

지난 9월 10~11일 열린 ‘Adoption Truth’ 국제 컨퍼런스에서 TRC 보고서를 논의한 결과, 입양은 더 이상 보건·복지의 문제가 아니라 범죄라는 결론에 이르렀습니다.

아동납치, 아동절도, 신원 위조, 문서 위조, 금전적 이익을 위한 아동매매, 친생부모에게 자녀가 사망했다고 거짓 보고, 가족으로부터의 강제 분리, 협박, 강압, 구조적 부패 — 이 모든 행위는 범죄입니다.

입양과 입양기관이라는 용어는 현실을 은폐하고 왜곡합니다. 우리가 마주하고 있는 것은 아동을 상품화한 조직적 범죄입니다. ‘입양인’이라는 표현보다 ‘강제실종 피해자’ 혹은 ‘강제 이주된 사람들’이라는 표현이 훨씬 정확합니다. 한국의 입양기관들은 단 한 건의 합법적 입양도 수행하지 않았습니다. 그들의 역할은 국제 및 국내의 주문에 따라 아동을 확보·공급하는 것이었으며, 그들은 아동 브로커였습니다.

위원회는 한국 정부와 국가가 위임한 민간기관들이 국제입양 과정에서 발생한 참혹한 범죄에 대해 책임이 있으며, 직접 가담하거나 이를 승인하였음을 명확히 밝혔습니다.

우리는 보복이나 금전적 보상을 원하지 않습니다. 그것은 우리가 이 일을 시작한 이유가 아니었습니다.

우리가 요구하는 것은 인간 거래와 범죄 행위에 책임이 있는 사람들과 조직들이 국제 법체계 안에서 책임을 지는 것입니다. 한국과 수용국들은 국제적 의무에 따라 진상 규명, 수사, 기소, 처벌을 수행해야 합니다.

한국은 2005년 로마규정을 비준함으로써, 강제실종이 시효가 존재하지 않는 중대한 반인도적 범죄임을 승인했습니다. 2007년에는 이를 국내법으로 도입하여 이른바 ICC Crimes Act를 제정했습니다.

2023년에는 유엔 강제실종방지협약(ICPPED)을 비준하여 강제실종 사건에 대한 조사·기소·처벌 의무를 다시 확인했습니다.

대한민국 헌법 제6조는 비준된 국제조약과 협약은 국내법과 동일한 효력을 가진다고 명확히 규정하고 있으며, 국제 관습법 또한 국내법으로 인정한다고 명시하고 있습니다.

우리가 지금 논의하는 범죄들은 1970년대, 1980년대, 1990년대 그리고 현재까지 이미 범죄로 규정되어 왔으며, 그 당시와 지금 적용되는 형법 조항은 동일합니다.

아동절도, 납치, 문서위조, 인신매매 등은 그때도 범죄였고 지금도 범죄입니다.

강제실종과 반인도적 범죄의 특징은 단일 사건이 아닌 지속적·계속적 범죄로서, 시효가 존재하지 않는다는 것입니다. 1980년의 납치는 2025년에도 여전히 납치이며, 1970년대의 아동절도는 지금도 범죄이며 그 범죄가 종료될 때까지 범죄로 남습니다.

국제법과 국내법 어디에서나 강제실종은 범죄로 규정되어 있지만, 현실에서는 아무 것도 이루어지지 않고 있습니다. 언제까지 법과 조약만 만들어질 것입니까? 행동은 언제 시작됩니까?

한국과 덴마크에서는 이미 로마규정 및 ICPPED에 근거한 형사 고발이 이루어졌지만 실질적인 조치는 이루어지지 않고 있습니다.

우리 입양인들의 답은 명확합니다. 우리는 더 많은 조약과 약속을 필요로 하지 않습니다. 우리는 즉각적인 행동을 원합니다..

이번 컨퍼런스는 국가가 선언한 책임과 실제 행동의 부재 사이의 역설을 조명하는 데 목적이 있습니다.

이 자리에 참석하신 모든 분들, 그리고 전 세계에서 온라인으로 함께해 주시는 모든 분들을 진심으로 환영합니다.

감사합니다.

환영사



김도현, (사) 뿌리의집 공동 대표

평안하십니까. 이 인사를 진심을 담아 올립니다.

오늘 “입양 진실 국제 컨퍼런스: 인류에 반하는 범죄_강제 실종과 강제 입양”에 참석해 주신 모든 분께 감사의 말씀을 드립니다. 비대면으로 함께해 주시는 분들께도 같은 마음으로 환영하며 감사드립니다.

제2기 진실·화해를 위한 과거사위원회는 해외입양을 규율해 온 제도와 관행 속에 내재한 국가 폭력으로 인해 56명의 희생자가 발생했음을 규명하고, 이에 대한 국가의 사과를 권고했습니다. 지난 10월 1일, 이재명 대통령은 해외입양인이 겪어온 고통과 아픔에 공감하며 정중한 사과로 이 권고에 응답했습니다.

한국은 지난 70년 동안 해외입양을 지속해 왔습니다. 이는 동시에 오랜 기간 아동의 인권이 체계적으로 훼손되어왔다는 사실을 의미하기도 합니다. 이러한 일이 장기간 지속될 수 있었던 배경에는 해외입양이 송출국과 수령국 모두에게서 “찬란하게 빛나는 이미지(The Glowing Image)”로 받아들여져 왔다는 점이 있습니다. 이 이미지는 해외입양 과정에서 발생한 여러 문제와 범죄를 비범죄화하거나 정당화하는 역할을 해 왔습니다. 예를 들어, ‘고아 호적 만들기’는 입양기관, 시군구청, 가정법원이 공모하여 이루어진 명백한 위법 행위입니다. 그러나 해외입양의 긍정적 이미지로 인해 이러한 행위는 사회적으로 문제화되지 못했습니다. 범죄는 어떠한 명분으로도 정당화될 수 없지만, 오랫동안 이러한 구조가 유지되었습니다. 강제실종 역시 같은 맥락에서 이해될 수 있습니다. 해외입양 과정에서는 아동 납치와 신분 세탁이 반복적으로 발생했습니다. 이는 명백한 아동 대상 범죄입니다. 그러나 해외입양의 긍정적 이미지가 여기에 결합되면서 이러한 범죄는 적절히 다뤄지지 못한 채 무죄시 되는 경우가 많았습니다.

오늘 개최하는 “입양 진실 국제 컨퍼런스: 인류에 반하는 범죄 - 강제실종과 강제입양”은 지난 70년간 해외입양이 구축해 온 상징적 권력과, 그 권력에 기반한 비범죄화 구조를 검토하는 자리입니다. 이 논의를 통해 해외입양 과정에서 발생한 아동과 친생가족에 대한 폭력과 피해를 정확히 규명하고, 피해자와 친생가족에게 합당한 회복적 정의를 모색하고자 합니다. 마지막으로, 이번 컨퍼런스를 공동주최해 주신 DKRG, 아동권리연대, 남인순 국회의원님을 비롯한 여러 국회의원들께 감사드립니다. 무엇보다도 오늘의 컨퍼런스의 Keynote speech를 해주실 올리비에 드 프로빌 박사님과 증언자로 자신들의 이야기를 우리에게 들려주실 증언자님들(전봉수, 송용금, Aurelie TOUVE, Marie Louise Wang), 좌장을 맡아 주신 이석태 전 헌법재판관님, 허상수 진화위원님, 이형숙 박사님, 발제를 해주시는 이재승 교수님, 토론을

해주실 장완익 변호사님을 비롯한 토론자 여러분들께 진심어린 감사를 드리고 싶습니다. 오늘 참석해 주신 여러분 모두를 다시 한 번 환영하며 감사드립니다. 고맙습니다.

축사



남인순 (국회의원)

국회의원 남인순 (더불어민주당·서울송파구병), 반갑습니다. 국회 보건복지위원, 더불어민주당 송파병 남인순 국회의원입니다.

오늘 국회에서 <입양진실 국제 컨퍼런스 : 인류에 반하는 범죄, 강제실종과 강제입양>를 공동으로 주최하게 되어 매우 뜻깊게 생각하며, 함께 해주신 이상식·서영석·용혜인 의원님, 그리고 (사)뿌리의집, 덴마크 진상규명 그룹(DKRG), 아동권리연대 등 관계자 여러분들께 감사의 마음을 전합니다.

지난 3월, 진실·화해를 위한 과거사정리위원회는 2년 7개월간의 조사 끝에 해외입양 과정에서 발생한 다양한 인권침해를 인정하고, 국가의 공식 사과를 권고했습니다. 친부모가 살아 있음에도 고아로 조작되어 강제로 해외에 입양된 끔찍한 사례들이 확인되었으며, 이는 과거 해외입양 과정에서의 인권침해에 대해 국가 책임을 공식적으로 인정한 첫 결정이었습니다. 진화위의 결정은 해외입양인들의 인권침해를 공식적으로 인정했다는 점에서 중요한 의미가 있지만, 진실규명을 신청한 367명 중 단 56명만이 국가 책임을 인정받았고, 상당수는 ‘서류 미비’를 이유로 피해 사실을 인정받지 못했습니다. 하지만 과거 해외입양 자체가 신원 조작·서류 조작에 기초해 이뤄졌음을 고려한다면, 서류 부족을 근거로 피해를 부정해서는 안 될 것입니다. 특히 해외입양의 문제를 ‘강제실종’이라는 본래의 개념과 성격으로 정확히 규정하는 일은 진실규명을 위한 첫 출발점입니다. 이러한 문제의식은 진실·화해를 위한 과거사정리위원회(이하 진화위)의 조사 과정에서도 확인되었으며, 해외입양을 둘러싼 강제분리·기록 위조·동의 없는 입양 등 다양한 구조적 문제에 대한 검토가 필수적으로 제기되고 있습니다.

저는 지난 8월, 진실화해과거사위원회의 진실규명 범위에 민간기관이 운영했던 사회복지기관과 집단수용시설 뿐 아니라, ‘입양알선기관’에서 발생한 인권침해 사건도 추가하는 등의 내용을 담은 「진실·화해를 위한 과거사정리 기본법 일부개정법률안」을 대표발의했습니다. 빠른 시일 내에 통과될 수 있도록 최선을 다하겠습니다.

또한 지난 7월 19일부로 모든 입양 절차가 민간기관 중심에서 벗어나 국가와 지방자치단체가 직접 관리하는 공적 체계로 전환되었지만, 여전히 보완해야 할 과제가 많습니다. 친생가족 찾기를 위한 유전자 검사 지원, 국가 차원의 정보 연계 시스템 구축, 입양인의 정보공개청구권 확대 등 여전히 보완해야 할 과제들이 남아 있습니다.

국가는 피해자들의 평생의 상처를 치유할 수 있도록 책임을 회피하지 말고 구체적이고 실질적인 대책을 마련해야 합니다. 국가의 공식 사과와 함께 입양 정보 제공 시스템 개선, 입양인의 뿌리 권리 보장, 신원정보 조작 등 피해 구제 조치 등이 반드시 후속적으로 진행되어야

합니다. 국회 보건복지위원으로서 이러한 과제들이 끝까지 제대로 추진될 수 있도록 꼼꼼히 챙기겠습니다.

다시 한 번 오늘 자리에 함께해주신 모든 분들께 진심으로 감사드리며, 건강과 행복, 평화를 기원합니다.

감사합니다.

축사



이상식 (국회의원)

안녕하십니까? 국회의원 이상식입니다.

‘인류에 반하는 범죄, 강제실종과 강제 입양’ 토론회에 참석해 주신 모든 분께 깊은 감사를 드립니다. 특히 이 자리를 주관해주신 (사)뿌리의집과 텐마크 한국인 진상규명 그룹(DKRG) 관계자 여러분, 그리고 토론회를 공동 주최해주신 남인순, 용혜인, 서영석 의원님들과 모든 참여 단체에 감사드립니다.

우리가 오늘 이 자리에 모인 이유는 오랫동안 외면되어 온 해외입양 과정에서 은폐된 진실과 심각한 인권침해 문제를 직시하고, 해법을 모색하기 위함입니다.

1955년부터 1999년까지 해외로 입양된 아동은 약 14만 1천7백여 명에 달하는 것으로 추산됩니다. 당시 입양알선기관이 아동 확보부터 출국까지 전 과정에 관여하면서 해외입양의 산업화와 아동 상품화라는 심각한 문제가 발생했습니다.

「진실·화해를 위한 과거사정리위원회」는 지난 2025년 3월 25일, 해외입양이 국가의 지속적인 부당한 공권력 행사로 인한 구조적인 결과임을 공적으로 확인하는 결정을 내렸습니다. 이는 해외입양을 아동에 대한 '달콤한 복지'로 간주해온 한국 정부와 민간 사회에 대한 경종이자 철퇴와 같습니다.

그러나 진실 규명을 신청한 367건 중 56건만이 국가 책임을 인정받았고, 나머지 311건은 조사 중지 결정되었습니다. 과거 해외입양 자체가 신원 조작과 서류 조작에 기초해 이루어졌음을 고려할 때, ‘서류 미비’를 이유로 피해를 부정하는 것은 부당하며, 이는 해외입양인의 신분(신원) 정체성에 대한 권리, 즉 자신의 출생 정보를 알고 뿌리를 찾을 권리를 침해하는 것입니다.

이번 논의가 해외입양 과정에서 발생한 인권침해 문제를 바로잡고, 해외입양인의 중단 없는 권리 찾기 여정의 디딤돌이 될 수 있기를 기대합니다. 저 또한 국회에서 모든 노력을 다할 것을 약속드립니다.

감사합니다.

축사



용혜인 (국회의원)

안녕하세요.

기본소득당 대표 국회의원 용혜인입니다.

대한민국은 UN강제실종방지협약에 가입된 국가입니다. 그러나 1970년대부터 자행된 불법 해외입양과 강제실종 범죄에 대한 대한민국 정부 차원의 진상규명 노력은 턱없이 부족합니다. 2기 진실화해위원회는 불법 해외입양 진상규명 신청 건 367건 중 98건만을 의결했고 그마저도 42건은 '보류' 결정을 내렸습니다. 피해자의 일관된 진술에도 형식적 서류가 미비하다는 이유로 피해자의 권리구제를 포기한 것입니다.

강제실종 범죄는 그 사건의 특성상 서류가 조작되었거나 폐기되었을 우려가 크고, 당초부터 서류를 생산하지 않은 경우도 상당할 것으로 추정됩니다. 형식적 서류 미비를 이유로 국가가 강제실종이라는 반인륜적 범죄에 대한 진상규명을 외면하고, 국가폭력의 책임을 회피해서는 안됩니다.

국제인권법원의 판결 다수는 피·가해자 간의 증거에 대한 정보접근의 격차가 크고 이미 체계적인 인권침해가 자행된 점이 확인된 경우, 입증책임을 권리주장자가 아닌 국가에게 부여하고 있습니다. 독일의 연방나치피해자배상법은 나치의 특정 집단에 대한 박해 관행과 피해자가 해당 표적집단에 속한다는 점을 증명한 경우, 피해사실을 인정하고 있습니다. 3기 진실화해위원회 역시 강제실종범죄에 대한 피해 인정기준과 입증책임을 전환을 적극적으로 검토해야 할 것입니다.

오늘의 토론회는 불법 해외입양과 강제실종 범죄의 심각성을 알리고, 제대로 된 진실규명을 위한 관점과 방법의 전환을 모색하는 자리입니다. 뜻깊은 자리를 만들어주신 (사)뿌리의집, 덴마크 진상규명 그룹, 아동권리연대와 함께해주신 선배·동료 의원님들께 감사드립니다.

강제실종 범죄의 진실을 밝히고 피해자의 권리를 보장하기 위해 애써주시는 올리버 드 프로빌 전 UN강제실종위원회 위원장님을 비롯한 발제자·토론자 분들의 노고에도 감사드립니다. 무엇보다 용기 내어 피해경험을 진술해주신 전봉수 님을 비롯한 강제실종 피해생존자 분들께 존경과 연대의 마음을 전합니다.

기본소득당은 지난 4월 과거사정리법 전부개정안을 당론으로 발의하며, 중단 없는 과거사 진상규명을 촉구한 바 있습니다. 향후 3기 진실화해위원회를 통해 해외입양 과정에서 발생한 강제실종 범죄의 진실이 온전히 밝혀지고, 국가의 무책임과 방기로 고통 받은 강제실종 피해생존자의 명예회복이 조속히 이뤄질 수 있도록 앞으로도 최선을 다하겠습니다.

감사합니다.

축사



서영석 (국회의원)

안녕하십니까,

더불어민주당 국회 보건복지위원회 소속, 경기 부천시(갑) 국회의원 ‘국민비타민’ 서영석입니다.

<입양진실 국제컨퍼런스 – 인류에 반하는 범죄: 강제실종과 강제 입양> 개최를 진심으로 축하드립니다. 공동주최로 뜻을 모아주신 남인순·용혜인·이상식 의원님께 감사드리며, 뿌리의집·덴마크 한국인 진상규명 그룹·아동권리연대, 그리고 국내·해외 여러 입양인 단체 여러분의 노력에도 깊은 경의를 표합니다. 아울러 강제실종과 강제입양이라는 무거운 진실을 드러내기 위해 용기 내어 오랫동안 싸워오신 피해 당사자들에게도 존중과 연대의 마음을 전합니다.

올해 3월, 진실·화해위원회는 1980년대 해외입양 과정에서 발생한 허위 기록, 강제적 분리, 은폐와 방치, 친생 정보의 조작 등을 국가 책임이 있는 인권침해이자 구조적 폭력으로 공식 규명했습니다. 이는 피해 당사자들이 오랫동안 주장해 온 진실이 국가 기관에 의해 확인된 중요한 사건이며, 앞으로 국가가 책임 있게 해결해야 할 과제가 더욱 분명해졌음을 의미합니다.

최근 우리 입양제도는 민간 중심 구조에서 벗어나 공적입양체계로 전환되었지만, 아직 제도적 기반이 충분하다고 보긴 어렵습니다. 입양기록의 진실성 확보, 피해자 지원체계 보완, 절차의 투명성과 사후관리 강화 등 공적 체계가 안정적으로 작동하기 위해 제도개선이 필요합니다.

국회 보건복지위원으로서 저는 공적입양체계의 안정적인 정착과 국내·해외 입양인의 권리 보장 확대를 위해 많은 노력을 기울이고 있습니다. 오늘 발표될 피해 생존자들의 증언과 국제사회의 논의 역시 한국 사회가 시급히 풀어내야 할 과제입니다. 국회에서 이러한 목소리가 실질적인 정책 변화로 이어지도록 최선을 다하겠습니다.

다시 한번 오늘 국제컨퍼런스의 개최를 축하드리며, 강제실종과 강제입양 피해자들이 요구하는 진실 규명과 책임 확립을 위해 앞으로도 연대하며 꾸준히 노력해 나아가겠습니다.

감사합니다.

강제실종 피해 생존자

좌장: 이형숙 (국가폭력 피해법 국민연개 공동집행위원)

1. 희망원에 빼앗긴 **24년** : 나는 희망원에 가고싶지 않았다.
전봉수, 희망원 시설 피해자
2. 사망이라 선언된 뒤 해외로 입양된 나: 진실을 찾는 여정
Marie Louise WANG, Danish Korean adoptee
3. 강제 실종으로서의 입양: 프랑스로 입양된 한 한국인 아동의 증언
Aurélie TOUVÉ, Digital Learning Consultant, CEO
4. 입양인지도 모른 채, 아이 손을 놓쳤어요
송용금, 해외입양인 범희의 어머니

희망원에 빼앗긴 24년: 나는 희망원에 가고싶지 않았다.



전봉수

안녕하세요

저는 대구에 사는 1964년생 전봉수입니다.

원래는 64년생이지만 희망원에서 강제로 58년생으로 바뀌어서 지금은 58년생으로 살고 있습니다.

저는 원래 충청남도 온양에서 태어나고 자랐습니다. 제 가족은 9남매이고 저는 일곱번째입니다. 밑에는 여동생 두 명이 있습니다. 온양에 살면서 세차장, 공사장, 페인트칠 같은 일을 하면서 지내고 있었습니다.

1998년에 11월 어느날 천안역에서 놀고 있는데 스님이 국밥 사준다고 해서 따라갔다가 강제로 잡혀 희망원에 가게 되었습니다. 그 뒤로 저는 제 마음과 관계없이 희망원에 들어가게 되었습니다. 들어가자마자 독방에서 지냈는데 어느날 나오라고 해서 독방에서 나왔습니다. 독방에 나온 다음에 많은 거주인들과 단체생활을 시작했습니다.

희망원에 갇혀있을 때 부모님 이름, 집 주소를 다 알고 있었는데 가둬놓기만 하고 못나가게 하니 집에 가고 싶다고 말하지 못했고 희망원에서는 아무도 내 가족을 찾아 주지 않았습니다.

희망원 안에서는 가방 만드는 일을 했는데 아침 9시 반에 시작해서 저녁 5시까지 했습니다. 그때 월급은 5만원 이었습니다.

희망원에서 살면서 죽는 사람들도 많이 봤고 도망갔다가 잡혀 오는 사람들도 봤습니다. 그래서 도망가면 안 되겠다. 생각했습니다. 그리고 진짜로 맞기도 했습니다. 그러던 어느날 희망원에 있는 사람들이 밖에 나가서 산다는 이야기를 들었습니다. 친했던 친구도 밖에 나가서 산다고 하니 나도 나가서 살고 싶다고 생각하게 되었고 2022년 7월에 나로센터를 통해서 나오게 되었습니다. 시설에서 나와 학교도 다니고 일도 하면서 지내고 있었는데 어느날 희망원에서 살다 나온 사람들한테 물어볼게 있다고 해서 이야기하다가 가족들에 대해 이야기하게 되었는데 내가 집주소랑 부모님이름 다 알고 있으니까 선생님하고 같이 경찰서를 가게 되었습니다.

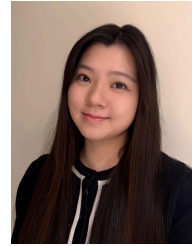
경찰서에 가서 집주소랑 부모님 이름이랑 이야기하니 등본을 떼줬는데 그때 진짜 내 나이를 알게 되었고 경찰에 가족을 찾아달라고 이야기하고 3시간정도 있으니까 가족을 찾았다고 경찰서에서 전화가 왔습니다. 그렇게 24년만에 가족을 만나게 되었습니다.

희망원에서 24년동안 산 내 청춘이 아깝습니다. 희망원에 납치되지 않았으면, 희망원이 내 나이를 바꾸지 않았다면, 가족들을 만나서 온양에서 계속 살았을 텐데 너무 화가 납니다.

그래서 대한민국에 사과를 받으려고 소송을 했는데 대한민국은 제가 희망원에 가고싶어서 갔다고 하네요 저는 희망원에 가고 싶어서 간게 아닙니다. 억울합니다. 꼭 진실이 밝혀지고 사과를 받으면 좋겠습니다.

그리고 저처럼 시설에 갇혀 피해 받은 사람들이 도움받고 살아갔으면 좋겠습니다. 감사합니다.

사망이라 선언된 뒤 해외로 입양된 나: 진실을 찾는 여정



마리 루이즈 왕

제 이름은 마리 루이즈입니다. 저는 33살이고 덴마크에 살고 있는 입양인입니다. 저는 오랫동안 사실 내 것이 아니었던 이야기를 바탕으로 살아왔습니다. 양부모님도 그 이야기를 믿었고, 저도 믿었습니다. 왜냐하면 정부의 승인도 받은 한국과 덴마크의 공인된 기관이 전한 그럴듯하고 따뜻하게 포장된 이야기를 누가 의심하겠습니까. 저는 1992년 6월 서울에서 태어났습니다. 얼마 지나지 않아 해외입양을 통해 덴마크로 보내졌습니다. 제 입양서류에는 단순하고 동정을 불러 일으키는 이야기가 적혀 있었습니다. 제 친어머니는 아이를 돌볼 수 없는 젊은 미혼의 대학생이었고, 저를 좋은 가정에 보내기 위해 가슴 아픈 결정을 내렸다는 이야기. 입양을 불가피하고 깨끗한 것으로 보이게 하기 위해 만들어진 이야기였습니다. 하지만 진실은... 애초에 저에게 닿지 않도록 숨겨져 있었던 것 같습니다. 2023년에 저는 오랫동안 꿈꿔 숨겨져 있던 문서를 발견하게 되었습니다. 한국사회봉사회(KSS)에 입양기록을 요청했을 때, 제가 받은 정보는 그동안 믿어온 이야기와 전혀 맞지 않았습니다. 한 문서가 모든 것을 바꿔놓았습니다. 단 몇 줄로. 지금 제 손에 들려 있는 이 문서입니다. 제 친어머니는 임신 34주에 한 산부인과를 찾았습니다. 어머니도 건강했고, 저도 건강했습니다. 그런데 기록 어디에도 왜 갑자기 유도분만을 해야 했는지, 왜 제가 조산하게 되었는지 설명이 없었습니다. 그럼에도 그녀는 유도분만을 받았습니다. 그리고 출산 후, 어머니는 아기가—제가—죽었다는 말을 들었습니다. 어머니는 제게 무슨 일이 일어났는지 믿을 수 있는 이유가 전혀 없는 채, 제가 죽었다고 생각하며 병원을 떠났습니다. 하지만 저는 죽지 않았습니다. 출산 병원의 의사에 의해, 그리고 KSS의 사회복지사의 ‘도움’을 받아 한국사회봉사회로 넘겨졌습니다. 제 친어머니는 저를 버린 적이 없었습니다. 그녀 역시 잔혹한 거짓의 피해자였습니다. 이 진실을 알게 된 뒤, 저는 다시 KSS를 찾아가 설명을 요구했습니다. 그들은 “입양에 필요한 동의서는 있다, 하지만 개인정보 보호법 때문에 공개할 수 없다”고 말했습니다. 하지만 이런 상황에 ‘동의’란 존재할 수 없습니다. 어떻게 가능합니까? 아이가 죽었다고 들은 상황에서 어떻게 입양 동의를 할 수 있습니까? 게다가 KSS는 이 사실을 몰랐던 것이 아닙니다. 그들은 그 서류에 서명했습니다.

자신의 시작과 정체성이 거짓 위에 세워졌다는 사실을 알게 되는 건 너무나 파괴적입니다.

제 입양은 사랑이나 아동의 필요 때문이 아니었습니다.

그것은 이윤이라는 목적을 위해 아기와 엄마를 분리시키는 시스템이었습니다.

저와 양부모님, 그리고 친어머니—우리를 제외한 모두를 보호하는 시스템 말입니다.

오랫동안 이것은 ‘입양’이라고 불려왔지만, 이제는 다르게 봐야 합니다.

우리가 이걸 진짜로 뭐라고 불려야 하는지 말할 때입니다.

“강제실종(enforced disappearance)”입니다.

이 진실을 알게 된 것은 끝이 아닙니다. 무언가 새로운 것의 시작입니다. 진실—모든 진실을 찾는 과정의 시작입니다. 제가 진짜 질문을 하기 시작하자, 사람들은 불편해했습니다. 갑자기 모든 것이 “개인정보”라는 장막 뒤로 숨겨졌습니다. 저는 “실종되지 않았다”는 이유로 DNA 검사도 거부당했습니다. 그리고 아이들의 복지를 위한다는 기관들은 침묵합니다.

단순해 보였던 제 이야기는 결국 은폐였다는 사실을 드러냈습니다. 그리고 가장 슬픈 건, 저만 이런 경험을 한 것이 아니라는 겁니다. 수많은 입양인들이 자신들의 최초 역사가 다시 쓰여졌고, 미화되었고, 거짓으로 덮여 있었다는 사실을 알아가고 있습니다.

그렇다면 이제 무엇을 해야 할까요?

저는 답을 원합니다. 제 양부모님도 그렇고, 제 친어머니는 더더욱 그렇습니다. 아이가 살아 있는데 죽었다고 믿으며 평생을 살아가야 하는 어머니가 있어서는 안 됩니다. 이것은 한 건의 사례에 그치는 문제가 아닙니다. 불법적으로 입양된 모든 사람들에 대한 문제이고, 책임을 묻는 문제입니다.

한국은 강제실종방지협약(Enforced Disappearance Convention)에 가입한 국가입니다. 그 보호가 실제로 적용되어야 합니다. 의미가 있어야 합니다. 제 이야기가 조금이라도 인식을 넓히는 데 도움이 되기를 바랍니다. 저는 단지 책임을 요구할 뿐입니다. 이 일을 가능하게 했고 지금까지도 책임을 회피하는 시스템과 사람들은 더 이상 아무 일 없었다는 듯 행동할 수 없어야 합니다.

강제 실종으로서의 입양: 프랑스로 입양된 한 한국인 아동의 증언



Auréli TOUVÉ

안녕하세요. 제 이름은 오렐리(Auréli)입니다. 저는 1983년 5월 27일, 한국에서 김범희라는 이름으로 태어났습니다. 같은 해 프랑스로 입양되었습니다. 태어난 지 마흔 해가 지나, 그리고 친생가족을 찾은 이후, 저는 2023년에 제가 버려진 아이가 아니었다는 사실을 알게 되었습니다. 저는 국제입양 과정에서 불법적으로 입양된 것이었습니다. 이 사실을 확인한 뒤, 2023년 12월 저는 프랑스 검찰에 강제실종으로 고소장을 제출했습니다. 지금은 2025년 11월이지만, 저는 아직도 답을 기다리고 있습니다.

제가 여기에서 말씀드리는 내용은 모두 2023년부터 조금씩 공개된 문서들, 여러 증언, 그리고 한국에서 변호사와 함께 진행한 가족의 노력에 근거하고 있습니다.

2023년 9월, 저는 제 입양기록 사본을 받기 위해 서울의 입양기관을 방문했습니다. 하지만 나중에 그 기록은 불완전한 사본임이 드러났습니다. 제 큰언니는 기록의 모든 페이지를 꼼꼼히 읽어주었고, 그 과정에서 여러 문제점이 드러났습니다.

한 문서에는 제가 미혼모에게서 태어난 아이라고 적혀 있었습니다. 하지만 이는 사실이 아닙니다. 제 부모님은 현재까지 50년 넘게 결혼 생활을 이어오고 있습니다. 또 다른 문서에는 어머니가 직접 저를 기관에 데려왔다고 적혀 있지만, 이것 또한 사실이 아니며, 어머니 역시 그렇지 않다고 늘 말씀하셨습니다.

그럼에도 같은 문서에는 제 가족에 대한 자세한 정보가 기록되어 있었습니다. 부모님의 학력, 나이, 직업, 네 명의 언니가 있다는 사실까지. 심지어 부모님이 기혼이라는 사실도 명시되어 있어 앞선 내용과 모순됩니다. 그렇다면 기관은 이 모든 정보를 어떻게 알았던 것일까요? 부모를 “미상”이라고 기록하면서 이렇게 구체적인 정보를 동시에 알고 있었다는 것은 모순입니다.

결국, 기관은 제 이름으로 고아 등록까지 만들어 두었습니다. 부모 정보가 모두 있는 상황에서 어떻게 이런 등록이 가능했겠습니까?

이처럼 한국어 기록에서 드러난 수많은 모순들을 확인한 언니는 부모님과 함께 제가 태어난 정확한 시점과 상황을 다시 재구성하자고 했습니다.

1983년 5월 27일, 제가 태어난 날, 어머니는 성남의 한 시설에서 출산하셨습니다. 그것은 공공병원이 아닌 저소득층을 위한 산부인과였고, 어머니는 그 이름을 지금도 정확히 기억하십니다. 산부인과 원장은 부모님께 “잠시 아이를 기독교 가정에 위탁해두라”며, 언제든

방문해서 데려갈 수 있다고 제안했습니다. 부모님은 이것이 단지 일시적 위탁이라고 믿고 동의하셨습니다.

그러나 제 기록에 따르면, 저는 태어난 바로 다음 날인 5월 28일 해외입양기관에 접수된 것으로 되어 있습니다. 이 빠른 속도는 원장이 부모님께 말했던 “일시 위탁” 의도가 처음부터 없었음을 보여줍니다. 부모님이 저를 데리러 돌아왔을 때, 저는 이미 사라져 있었습니다. 그 산부인과 자체도 사라져 있었습니다. 그 자리에 서 있었던 것은 경찰서였습니다. 기록도, 설명도, 흔적도 없이. 그리고 무엇보다 아기도 없었습니다.

주민들은 부모님께 “아이는 아마 외국으로 입양 보냈을 것”이라고 말했습니다. 부모님이 저를 집으로 데려갈 기회조차 갖기 전에, 저는 사라졌습니다.

1983년 8월 5일, 저는 태어난 지 두 달 만에 프랑스 입양기관과 프랑스 당국에 의해 입양이 승인되었습니다. 같은 해 9월 16일, 저는 프랑스에 도착했습니다. 생후 4개월밖에 되지 않았습니. 그리고 저는 입양가정에서 평탄하고 평온한 20년을 보냈습니다.

제가 스무 살이 되던 해, 2003년 2월, 저는 처음으로 프랑스에서 입양기관에 연락했습니다. 그때 저는 친생가족이 이미 1998년부터 저를 찾고 있었다는 것을 몰랐습니다. 그렇게 재회는 빠르게 이루어졌습니다. 제 입양 20년 만에 가족과 다시 만났습니다.

그러나 다시 20년이 지난 2023년, 저는 제 기록 사본을 받았고, 언니와의 교차 확인을 통해 사실을 알게 되었습니다. 이 모든 것이 사고도 실수도 아니었으며, 의도적인 아동 탈취였다는 것을. 그리고 저는 처음으로 깨달았습니다. 부모님이 저를 데리러 돌아온 것은 후회 때문이 아니라, 그것이 애초부터의 계획이었다는 것을.

부모님은 친권을 포기한 적이 없습니다. 그들의 딸은 하루아침에 사라졌습니다. 저는 버려진 적이 없습니다. 저는 빼앗겼습니다.

저와 부모님, 언니들은 첫 방문 며칠 뒤 입양기관과 다시 면담을 요청했습니다. 2023년 9월 말이었습니다. 이때부터 기관은 문서들을 조금씩 내놓기 시작했습니다.

첫 번째로 공개된 것은 아버지가 산부인과 원장에게 제출했던 호적등본이었습니다. 하지만 그것은 제 기록 사본에는 포함되어 있지 않았습니다. 격렬한 논의 끝에 기관은 그것을 꺼내 보였지만, 부모님께 돌려주지도, 복사해 주지도 않았습니다. 우리는 사진만 찍을 수 있었습니다.

이 문서는 기관이 처음부터 저의 가족을 알고 있었다는 결정적 증거입니다. 이는 다시 한 번 “유기”나 “부모 미상”이라는 기관의 주장을 반박합니다.

그러나 가장 중요한 한 가지가 여전히 없었습니다. 바로 입양동의서입니다. 기관은 입양동의서를 “보유하고 있다”고 주장했지만, 반복된 요구에도 절대 보여주지 않았습니다. 그들이 내세운 이유는 늘 동일했습니다. “입양특례법상 공개 의무가 없는 문서”라는 해석 때문이라고.

그 시점에서 우리는 변호사가 개입해야만 문서들이 나타난다는 것을 깨달았습니다. 부모님은 입양동의서 확보를 위해 변호사를 선임했습니다. 그 문서가 조작되었음을 입증하기

위해서였습니다. 입양동의서는 제 출생, 정체성, 그리고 어머니의 이름으로 되어 있는 서명에 관한 핵심 문서입니다.

2024년 10월, 변호사가 개인정보보호위원회에 진정서를 제출한 이후, 저는 아버지가 1998년에 쓴 편지를 받았습니다. 아버지가 제가 해외로 입양되었다는 사실을 알게 되었을 때 쓴 편지입니다. 이 편지 역시 제 기록에는 없었고, 기관은 첫 방문 당시 언급조차 하지 않았습니다. 이 편지는 25년 동안 숨겨져 있었습니다. 변호사가 개입한 뒤에야 비로소 확인할 수 있었습니다.

긴 싸움과 많은 절차 끝에, 입양기관은 마침내 2024년 5월, 입양동의서를 보여주겠다고 했습니다. 그러나 그것은 부분적으로만 공개되었고, 우리는 사진을 찍는 것도 금지되었습니다. 절반은 가려져 있었고, 기관은 “가족과 무관한 제3자의 정보가 포함되어 있다”고 했습니다.

하지만 질문이 생깁니다. 입양동의서는 부모만 관련되는 문서인데, 왜 제3자가 등장합니까? 그리고 왜 그 사람의 정보가 가려져야 합니까? 기관은 그 사람이 제 아버지가 아니라고 확인했습니다. 그렇다면 아버지의 동의 없이 저는 어떻게 입양될 수 있었습니까?

보이는 부분에는 지문이 찍혀 있습니다. 하지만 어머니는 그 지문이 본인의 것이 아니며, 서명 또한 자신의 필체가 아니라고 변호사에게 분명히 말했습니다.

그렇다면 누가 쓴 것입니까? 누가 지문을 찍었습니까? 어떤 상황에서 그런 일이 이루어진 것입니까?

입양동의서의 날짜는 제가 태어난 당일입니다. 출산 직후의 산모가 어떻게 충분한 설명을 듣고 즉시 포기 동의를 할 수 있습니까? 그리고 왜 공동 친권자인 아버지는 문서 어디에도 등장하지 않습니까?

40년 넘게 입양의 핵심 증거인 입양동의서는 공개되지 않았습니다. 기관에 의해 고의적으로 차단된 상태였습니다.

증거가 이렇게 40년 동안 봉인되어 있는데, 제가 어떻게 범죄가 있었다는 것을 입증할 수 있습니까? 기관이 가려진 문서를 근거로 “합법적인 입양”이라고 주장한다면, 그 당시 절차가 적법했음을 입증해야 하는 쪽은 기관이어야 합니다. 그 반대가 아닙니다. 피해자에게 위법성을 입증하라는 부담을 지우면 안 됩니다.

이것은 단순한 행정 문제가 아닙니다. 진실을 차단하는 행위입니다. 사건을 재구성하는 것을 막는 행위입니다.

이 모든 것은 지금 이 순간에도 제 기본권을 침해하고 있습니다. 1983년 5월에 시작된 실종은 지금도 계속되고 있습니다. 강제실종은 단순히 사람이 사라지는 행위에 그치지 않습니다. 무슨 일이 있었는지 설명할 수 있는 정보를 고의로 숨기는 것 역시 강제실종의 일부입니다. 제 이야기에서, 입양은 실종을 지우는 것이 아닙니다. 그 일부입니다. 핵심 문서들이 공개되지 않는 한, 침해는 계속됩니다.

저는 제 기록 전체 공개를 요구합니다. 저는 입양동의서 공개를 요구합니다. 저는 어머니 대신 서명한 사람이 누구인지 밝혀지기를 요구합니다. 저를 기관에 데려간 사람이 누구인지 밝히기를 요구합니다. 저는 제가 겪은 일이 강제실종으로 인정되기를 요구합니다.

제 한국 가족과 프랑스 가족—저와 마찬가지로 피해자인 두 가족—은 저의 요구를 지지하며 진상규명을 요구합니다. 우리는 사실이 밝혀지고 책임이 명확해지기를 기다리고 있습니다.

들어주셔서 감사합니다. 저는 오렐리 투베(Aurélie Touvé), 김범희입니다. 그리고 저는 40년 넘게 부정되어 온 진실에 대한 접근권을 여기에서 말씀드렸습니다.

입양인지도 모른 채, 아이 손을 놓쳤어요



송용금

저는 프랑스 해외입양인 김범희의 엄마입니다.

1983년 저는 작은 조산원에서 범희를 낳았습니다. 그때 이미 딸이 넷이었고, 남편은 장남이라 아들을 꼭 낳아야 한다는 부담이 아주 컸습니다. 그 시절에는 딸만 낳으면 여자가 얼마나 많은 소리를 들었는지 모릅니다. 집안 형편도 넉넉하지 않았습니다.

다섯째 딸을 낳고 제가 걱정하고 있으니, 조산원 원장은 아이가 없는 좋은 집에 보내면 잘 키울 거라면서 교회 집사를 언급했습니다. 우리는 그 집사가 직접 범희를 정성껏 키울 줄 알았습니다. 우리집 바로 옆에 교회가 있었기 때문에 저는 우리 가족이 멀리서라도 범희가 자라는 모습을 가끔 볼 수 있을 거라고 믿었습니다. 제가 물었을 때 원장도 분명히 그렇게 할 수 있다고 저를 안심시켰습니다.

정말 많이 고민했지만, 우리 집보다 나은 환경에서 크는 것이 아이에게도 좋겠다고 생각했습니다. 아이를 좋은 집에 보내려면 등본이 필요하다 하여, 우리 가족 정보가 모두 들어 있는 등본까지 건넸습니다. 아기가 잘 크기만을 바랐습니다. 출산 당일이라 정신없고 힘든 상황에서 내린 결정이 제대로 된 결정일 리 없었습니다. 그것이 입양이라는 것도 몰랐습니다. 입양, 그것도 해외입양이라니요. 범희가 잘 크는 걸 볼 수 없다면 보내지도 않았을 겁니다. 우리 가족과 범희의 인생이 통째로 바뀌고 끈이 완전히 끊어지는 순간이 부모인 우리도 모른 채 결정되었습니다. 제대로 된 입양 절차나 상담도 없었고, 동의서 작성도 없었습니다. 알고보니 조산소 원장은 우리가 아이를 맡기자마자 바로 홀트로 보냈더군요. 동네 교회 집사 얘기는 우리를 속이는 미끼에 불과했습니다.

아이를 보내고 집에 돌아온 뒤부터 제 고통이 시작됐습니다. 먹지도 자지도 못하고, 혼자 울다가 잠결에 벌떡 일어나 울기도 했습니다. 도저히 아이를 두고 살 수 없을 것 같아 얼마 지나지 않아 다시 조산원을 찾았습니다. 범희를 다시 데려와야겠다는 마음뿐이었습니다. 정확히 기억이 안나지만, 젖이 붙어 견딜 수 없이 아팠을 때니 출산 후 그리 오랜 시간이 지나지 않았을 때입니다. 그런데 조산원은 이미 이사를 가고 없었습니다. 내 아이가 어디에 있는지, 살아는 있는지, 아무것도 알 수 없었습니다. 주변 사람들에게 물어보니 그 조산소에서 해외입양을 보냈을 거라며 내 아이를 찾는 것을 포기하고 살라고 하였습니다.

그때부터 제 삶은 정말 사는 것이 아니었습니다. 아이를 버렸다는 죄책감에 누구에게도 말하지 못하고, 오랜 세월 혼자 가슴을 치며 울었습니다. TV에서 수요일마다 하는 이산가족찾기 프로그램이 나오면 혹시 범희가 나를 찾을까 싶어 보다가 혼자 오열하기를 수 년을 했습니다. 그런 저를 보고 식구들이 이상히 여겨 물었고, 그제야 아이들과 다른 가족들도 범희 입양 사실을 알게 되었습니다. 자녀들이 여기저기 입양기관을 다 뒤진 끝에 범희가 홀트를 통해 프랑스로

입양되었다는 사실을 알아냈습니다. 범희가 살아 있다는 안도감도 잠시, 우리를 속이고 아이를 그렇게 멀리 보냈다는 사실에 기가 막혔습니다.

1998년도에 홀트에 찾아가 범희와 연결해달라고 부탁했지만, 아이가 미성년자라 안 된다는 말만 되풀이했습니다. 우리는 이사를 갈 때도 새로운 연락처를 남기고, 범희가 우리를 찾아주기만을 기다렸습니다. 그러나 홀트는 우리와 아이를 연결하려는 어떤 적극적인 노력도 하지 않았고, 그냥 기다리라는 말뿐이었습니다. 마침내 2003년 1월 홀트를 통해 범희가 연락을 해왔고 그해 7월 프랑스 부모님과 함께 한국에 방문하여 한국가족과 만났습니다.

그 이후로도 자살충동과 함께 심한 우울증에 시달리던 범희는 자신이 버려지던 당시 기록이 남아있는 흔적을 찾아 2023년 9월 홀트에 방문하여 입양서류를 요청하였고 사본을 건네 받았습니다. 전달과정에서 담당 직원에게서 “너의 부모가 모두 동의하였기 때문에 해외입양이 된거다”는 설명을 들었습니다. 20년 넘게 범희가 알고 있던 사실과 달랐기 때문에 범희는 우리가 거짓말을 해왔다고 오해하였고 배신감까지 느끼면서 정신적으로 고통스러워했습니다. 범희가 입양서류를 홀트에서 받고 나서야 입양동의서라는 것이 있다는 이야기를 듣고 깜짝 놀랐습니다. 우리는 그런 서류에 지문을 찍은 적이 없기 때문입니다. 홀트는 그 동의서를 부모인 우리에게도 보여주지 않으려고 갖은 핑계를 대며 아주 무례하게 굴었습니다. 우리가 지문을 찍었다면서 왜 우리에게 보여주지 않는지, 도무지 이해할 수 없었습니다. 결국 변호사를 고용해 많은 돈을 들인 끝에 동의서 일부를 눈으로만 볼 수 있었습니다. 홀트는 입양동의서에 부모의 지문이 찍혀있다고 수 차례 주장해왔었는데 입양동의서 공개를 앞두고 갑자기 태도를 바꾸었습니다. 갑자기 엄마인 저와 부의 친적이 동의하였다는 것입니다. 그 글씨는 제 글씨가 아니었습니다. 저는 그런 서류를 작성한적도 지문을 찍은 적도 없습니다. 그 서류에는 범희의 친부모가 아닌 제3자의 동의가 들어있었습니다. 도대체 누가 내 아이의 입양을 결정한건가요.

홀트는 우리가 아들을 낳아야 한다는 두려움과 혼란 속에서 어찌할 바를 모를 때, 우리를 속이고 아이를 너무 쉽게 데려갔습니다. 입양을 더 깊이 고민하거나, 되돌릴 기회도 주지 않았고, 서류를 조작했고, 부모와 아이를 다시는 만나지 못할 먼 나라로 보내버렸고, 오랜 시간 동안 우리 사이를 중간에서 계속 가로막았습니다.

한국에서 살아온 우리 가족과, 프랑스에서 자란 범희가 그 오랜 세월 동안 흘린 눈물과 고통을 이제 누구에게, 어떻게 책임지라고 해야 합니까. 저는 그 책임을 한국 정부와 홀트에 분명히 묻고 싶습니다.

-인터뷰 정리: 뿌리의집-

발표

좌장: 이석태, 전 헌법재판관

1. 이행기 정의와 법학방법론: 사실인선과 입증책임을 중심으로
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이행기 정의와 법학방법론: 사실인선과 입증책임을 중심으로



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1. 문제의 소재

진실규명작업에서 가장 큰 문제적인 영역은 사실 인정에 있다. 실종사건, 학살사건, 의문사사건, 고문, 성폭력, 가혹행위, 불법구금(불법재판), 강제입양 등 인권침해사건에서 직접적인 또는 (다소 느슨하더라도) 연관된 증거를 제시할 수 없는 피해자들은 피해자로 인정받지 못한다. 이른바 사건 발생 당시 상황에 비추어 개연성이 높은 주장, 이른바 상당한 주장(plausible allegations)에 대해서 만일 최근에 성인(남성)에게 일어난 사건처럼 통상적인, 고도의 개연적 증거를 요구한다면 그러한 사건은 영원히 미궁에 빠질 수밖에 없다. 진실화해위원회에서 주로 문제되었던 유형은 한국전쟁중 민간인 연행, 구금, 실종, 의문사사건, 납치사건, 교도소에서 퇴소후 사망하거나 교도소 내에서 사망하여 백골이나 사체를 유족이 인수한 사건, 공적인 문서기록의 흔적을 남기지 않았거나 그러한 문서에 접근할 기회가 보장되지 않은 강제입양 사건 등이다.

그러나 이러한 사실인정 상황의 난점을 타개할 주체는 국가조사 위원회와 법정이다. 신청 사건이 진실처럼 여겨지는데도 이를 증명할 당시 공적인 문서, 신문보도, 전문연구자의 연구 및 추정적인 결론을 확보하지 못하는 경우 신청사건을 기각하거나 좀더 유리한 판정국면을 기다리며 사실상 조사를 중지하는 경우가 적지 않다. 특히 법원은 이러한 사건들에 대하여 진실을 규명할 역량과 조건을 갖추었다고 보기 어렵다. 피해자측의 각고의 노력과 위원회의 진실규명 결정이 전제되지 않는다면 법원이 간단히 개연적인 주장을 수용하려고 하지 않는다. 법원의 결정은 언제나 신중해야 한다는 것이 사법제도의 본성에 해당하기 때문에 이를 비난할 수도 없다. 그나마 위원회가 상당히 전향적인 결정을 하는 경우에는 법원은 피해자에게 우호적인 판단을 내리기도 한다..

그 경우 장기적으로 은폐된 사건에서 피해자들에게 입증책임을 지울 것인지, 국가가 객관적 정황(관행)이나 유사사례, 방증(傍證)을 중심으로 국가에게 책임을 지울 것이냐가 문제된다. 입양인 문제와 관련해서도 ‘문서조작’, 특히 ‘문서 없는 입양’에 대해서 피해인정의 기준을 새롭게 정립할 필요가 있다. 일정한 유형의 사건에서는 <주장하는 자가 증명해야 한다>는 원칙은 <아는 자가 증명해야 한다>는 원칙으로 변경할 필요가 생긴다. 미주인권법원에서 사실인정에서 등장한 원칙을 요약하자면 ‘의문스러운 경우에는 피해자의 이익으로(in dubio pro victima)’ 판단한다는 것이다. 이는 감시, 사찰, 첩보, 연행, 구금에 가담한 국가기관이 피해자의 개연적 주장 앞에서 반증책임을 져야 한다는 것을 의미한다.

이러한 입증책임을 구조를 갖기 위해서는 입증책임 전환이나 추정 원칙을 진화위법, 시행령, 위원회 인정기준에 우선적으로 반영해야 할 것이다. 즉 사실인정에서 국가조사기구의 숨통을

터주는 것이 필요하다. 특히 위원회의 자료 및 증거제출요구에 대하여 인권침해 추정기관이 자료제출을 하지 않은 경우 과태료나처벌규정을 두고 있으나 진실규명과 피해구제를 담당하는 위원회의 시각에서는 이러한 규정은 특별히 필요하지 않으며, 오히려 증거 및 자료제출의무의 불이행이 구제절차법상 피해자에 유리한 결정으로 이어지도록 해야 한다. 민사소송에서도 이러한 법리를 반영한 규정들이 존재한다

아프리카 인권위원회는 인권구제 절차에서 입증책임을 정부에게 지우고 있는데 이는 매우 이례적이다. 미주인권위원회는 미주인권법원에 정부를 고발할 수 있기 때문에 이 경우 미주인권위원회가 청원의 기초사실을 증명해야 한다. 법의 일반원칙은 주장자가 증명해야 한다는 것이다. 그러나 모든 증거와 각종 자료를 종합하여도 양당사자 중 누구에게도 기울어지지 않는 최종적 단계에서만 입증책임이 문제되므로 최종단계에 이르기 전에 입증책임이 전환되어 사건이 해결될 수 있다. 최종적으로 진위불명인 경우(non liquet) 법은 주장자에게 입증책임을 지운다. 국제인권법원의 판결 다수는 인권침해 사건에서 입증책임이 사태의 국면 또는 단계에 따라 원고에서 국가로 이동하고, 국가가 적절한 반박 증거를 제출하지 못한 경우 국가책임을 인정해 왔다.

학자들은 입증책임을 전환을 정당화하는 두 가지 맥락을 제시한다. 하나는 인권침해에 관한 정보접근에서 가해자인 국가와 피해자 간에 심각한 격차가 존재하는 상황이고, 다른 하나는 체계적인 인권침해의 패턴이 존재하는 상황이다. 그러나 두 가지 사태는 중첩되어 나타날 수도 있다.

예컨대, 한국전쟁기의 국민보도연맹원학살이나 남미의 강제실종은 은밀하게 대규모로 정책적으로 추진되었다는 점에서 두 가지 맥락이 동시에 존재한다.

강제입양의 사례도 입양된 영유아들이 자신의 상황 자체를 객관적으로 인식할 수도 없고, 뒤늦게 관련 국가정보를 취득하는 데에도 어려움이 존재하며, 동시에 20여만 명의 아동에 대한 강제입양 관행이 존재하였고, 입양의 방식은 다양한 패턴으로 존재할 수 있다는 점까지 감안해야 할 것이다.

2. 증거에 대한 접근기회에서 격차가 존재하는 경우

신청인(원고)이 국가공권력에 의해 인권침해 사건이 발생했다고 주장하면 해당기관은 관련된 자료를 제출할 의무가 있다. 이러한 의무는 앞서 논의한 바와 같이 국가의 국민보호의무 및 진실규명의무에서 나온다. 이러한 의무는 진실규명신청인의 진실에 대한 권리에 상응한 것이다. 자료제공과 관련한 문제상황은 여러 단계에 걸쳐져 있다. 처음부터 인권침해상황에 대한 자료를 생산하지 않거나 은폐하거나 파괴하기도 하고 보존연한 규정에 따라 합법적으로 폐기할 수도 있다. 이렇게 폐기하거나 부재한 상황에서 관계기관이 자료를 제출하고자 하여도 제출할 수 없게 된다. 자료를 생산하여 보존하고 있는 경우에도 자료가 없다고 거짓을 말하거나 결정적인 자료를 제외하고 주변적인 자료만 제출하기도 한다. 이 모든 상황에서 신청인(원고)의 주장에 대하여 관계기관이 적절한 반증을 제시하지 못한 경우 피해자의 주장을 진실한 것으로 추정하고 국가책임을 인정해야 한다.

정보 접근에 대한 국가와 신청인 간의 격차, 이른바 기울어진 운동장에 입각해서 자료제공 불이행에 대한 국가책임을 묻는 사례들이 다수 존재한다. 예컨대, 운동권 학생이 국가고시

2차시험에 무난한 성적으로 합격하였는데 3차면접시험에서 알 수 없는 이유로 탈락하였다. 이러한 피해자는 국가가 시험관련정보나 지침을 공개하지 않은 이상 탈락사유를 전혀 알 수 없다. 이러한 경우 3차시험 탈락자는 국가에게 자료제공을 요구할 수 있고 정부당국이 이에 불응하거나 충분한 해명을 하지 못하는 경우 부당한 공권력행사로 탈락한 것으로 결론지을 수 있다. 건강한 몸으로 정보기구의 조사실로 구인 된 사람이 며칠 후 사망한 상태로 가족에게 인계되었다면 이 경우도 사망자의 가족들은 그 내막을 전혀 알 수 없다. 바로 이러한 경우 입증책임이 전환된다는 것이 국제인권기구의 결정이다.

미주인권법원은 일련의 강제실종사건에서 자국 안에서 발생한 사건을 해명해줄 자료를 국가가 관리하고 있는 상황에서 청원인이 증거를 제출하는 것이 불가능하다는 사정에 기초하여 국가가 자신을 방어할 수 없다고 반복해서 판시하였다. 국가가 문제의 자료를 관리하고 있기 때문이다. 미주인권위원회는 “청원인과 당사국이 증거에 대한 평등한 접근기회를 항상 갖는 것이 아니라는 점과 빈번히 국가만이 관련 정보에 대한 접근로를 갖는다는 점을 특히 고려할 때 입증책임이 청원인에게만 있을 수 없다”는 유엔인권위원회의 결정을 바마카 사건에서 원용하였다. 유럽인권법원도 동일한 논리로 입증책임을 국가에게 일관되게 인정하였다.

‘권리주장자가 증명해야 한다’(affirmanti incumbit probatio)는 원칙이 일정한 조건에서 ‘사정을 아는 자가 증명해야 한다’(cognoscenti incumbit probatio)는 원칙으로 전환되고 있다. 로버츠는 증거에 대한 접근기회의 격차를 이유로 입증책임을 전환하기 위해 필요한 세 가지 요건을 제시한다. 첫째로, 청원인이 우선적으로 청구소송을 개시할 정도로 개연적인 주장을 제출해야 한다. 둘째로, 관련정보에 대한 청원인의 접근기회가 차단되어야 한다. 셋째로, 입증책임의 전환을 정당화하기 위해서는 국가가 관련정보에 대한 접근기회를 갖고 있거나 관련정보에 접근할 수 있는 상황에 있어야 한다. 국제형사재판소규정은 강제실종을 “국가 또는 정치조직에 의하여 또는 이로부터 허가·지원 또는 묵인을 받아 사람들을 체포·구금 또는 유괴한 후, 이들을 법의 보호에서 장기적으로 배제할 의도 아래서 그러한 자유박탈에 대한 인정을 거부하거나 이들의 운명이나 행방에 대한 정보제공을 거부하는 것”으로 해명한다(제7조 제2항 (i)). 그러나 앞서 언급한 세 번째 조건은 가해자나 가해자 집단이 자료를 처음부터 생산하지 않았거나 이미 폐기한 경우라면 정보 제공 가능성에 대한 조건은 필요하지 않을 것이다.

희생자 개인과 국가 간의 정보접근에서 이러한 불균형이 존재하는 경우 입증책임은 국가로 전환된다. 실제로 인권침해 사건의 증거에 대한 접근성의 격차는 인권침해 피해자가 공권력의 은밀한 지배 아래에 놓여 있기 때문에 발생한다. 예컨대, 정치적인 이유로 감금된 건강한 사람이 원인불명의 사유로 사망한 사건, 고문·가혹행위를 당한 이후 교도소에서 적절한 치료 없이 사망한 사건, 운동권학생이 기관원이나 정보원의 추적을 피하려다가 사망한 사건, 체포나 포위상황을 벗어나려다 사망한 사건 등은 이러한 유형에 해당한다. 죽음에 이르는 과정에서 감시, 추적, 포위, 구금에 관여한 기관이 스스로 설득력 있는 반증을 제시하지 못한다면 국가책임을 인정해야 한다. 피해자가 기관에 의해 연행·구금되었다가 귀환하지 못하거나 사망한 경우 관련 기관이 귀가조치를 취했다는 사실을 명확하게 증명하지 못하거나 사인(死因)을 객관적으로 확립하지 못한다면 강제실종으로 국가책임이 인정된다.

2. 체계적인 인권침해가 자행된 경우

전쟁과 내전에서 반대세력에 대한 집단적 감금이나 학살, 권위주의 정권 아래서 운동권에 대한 박해, 의문사, 실종 등이 여기에 해당한다고 할 수 있다. 이러한 유형의 사건에서 증명은 대체로

강제소환, 체포, 살해, 시신수급이 이루어졌다는 사정을 피해자의 가족이나 동료들이 알고 있다면 그러한 사실로 국가의 불법행위를 용이하게 증명할 수 있다. 그러나 공권력의 남용에 의해 인권침해가 자행되었다는 점을 나타내는 구체적인 증거들이 존재하는 경우에도 국가책임을 인정할 수 있다. 예컨대, 경찰에 의해 연행되었는데 그 이후로 생사가 불명하거나 영동한 곳에서 시신으로 발견된 경우이다. 그러나 공권력에 의한 연행 여부조차도 확실치 않고 생사 여부도 알 수 없는 상황에서 입증책임의 문제가 발생한다. 그러한 사례들이 매우 희귀한 경우에는 신청인이 입증책임을 부담할 수밖에 없을 것이다. 그러나 강제연행이 체계적으로 또는 대규모로 발생하고 일정한 패턴을 확인할 수 있다면 증명방식이 달라질 수 있다. 앞의 나치피해자보상법에서 제시된바, 나치가 일정한 세력(표적집단)에 대하여 체계적인 박해를 가한 경우 피해자가 자신이 표적집단에 속한다는 점과 해당표적집단에 대해 나치의 박해관행이 존재하였다는 점을 증명함으로써 자신에게 발생했던 불이익조치도 나치박해라는 점을 간접적으로 증명할 수 있을 것이다.

실제로 이러한 증명방식은 유사사건을 원용한 입증, 즉 정황증거에 입각한 증명이라고 할 수 있다. 미주인권법원은 ①광범위한 인권침해의 존재(일반적인 관행), ②일반적인 관행과 피해자의 특수한 사건 간의 연결성 두 가지를 제시한다. 청구인은 광범위한 인권침해의 관행이 존재한다는 점과 희생자가 강제실종의 표적집단과 유사한 정치적 성향을 가졌다거나 유사한 활동을 수행해왔다는 점을 증명하면, 이에 대해 국가가 책임을 면하기 위해서는 문제의 희생자를 실종시키지 않았다는 사실을 증명해야 한다. 로버츠는 체계적 인권침해의 관행에 입각한 입증책임을 전환을 정당화하기 위해서 세 가지 조건을 제시한다. 첫째, 청원인은 그들이 당한 인권침해와 관련해서 개연적인 주장을 제기해야 한다. 둘째, 청원인은 인권침해의 특별한 체계적인 패턴이 존재한다는 점을 시사하는 증거를 제출해야 한다. 셋째, 청원인은 주장하는 인권침해가 그러한 패턴에 해당한다는 점을 보여주어야 한다.

문서과기와 기록은폐가 일상화된 한국의 현실에서 연좌제, 블랙리스트, 정치적 의문사, 실종, 운동권 파괴 및 박해와 같은 사건에서 이러한 간접적 유형적 증명은 매우 유용한 방식이다. 영장제도가 미군정기에 도입되었지만 헌법에 근거도 없는 군법회의는 50년대의 마지막까지 영장제도 및 사법적 절차에 관한 피고인의 권리를 무시하면서 약식 처형 관행을 정착시켰다는 점을 여순사건의 반대의견이 고려했다면 여순사건에서 공무원의 직무범죄에 대한 증명을 개별적 사건에서 요구하지 않았을 것이다. 피해자의 유족들은 재심청구를 통해서 이미 개연적 주장을 하였고, 진실화해위원회의 조사보고서는 군법회의에 의한 대규모 약식처형의 관행의 존재를 확인하였고, 피해자도 이러한 재판을 받았다는 점을 입증하였기 때문이다. 대규모 또는 체계적으로 자행된 인권침해들, 집단학살들, 의문사 및 실종의 패턴에 대한 이해만이 개별사건주의의 뜻에서 법률가를 해방시켜줄 것이다.

*Professor Lee has written extensively on the issue of fact-finding and burden of evidence. For further reading please refer to e.g. 이재승 (2023) 이행기 정의와 법학방법론: 사실인정과 입증책임을 중심으로. *Democratic Legal Studies*, 83, 109-156 (DOI: 10.15756/dls.2023..83.109)

기조발제

좌장: 이석태 (전 헌법재판관)

국제법상 인도에 반한 범죄 및/또는 강제 실종으로서
불법 입양을 기소할 국가의 의무

Olivier de Frouville (파리-판테온 대학 교수, 유엔
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국제법상 인도에 반한 범죄 및/또는 강제 실종으로서 불법 입양을 기소할 국가의 의무*



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먼저, 이번 국제 회의에 초청해 주신 주최 측에 깊이 감사드립니다.

앞서 언급했듯이, 저는 유엔 강제실종위원회의 위원장을 역임했으며 현재는 부위원장을 맡고 있습니다. 그러나 여기서는 전문가이자 국제법 학자인 개인 자격으로 발언하는 것이며, 제 의견이 위원회나 유엔의 공식 입장을 반드시 반영하는 것은 아닙니다.

저는 불법 입양과 관련하여 세 가지 법적 쟁점에 대해 말씀드리겠습니다.

첫 번째 쟁점은 불법 입양이라는 현상을 인도에 반한 범죄나 강제 실종과 같은 국제 범죄를 통해 검토하고 기소할 수 있는지 여부입니다.

두 번째 쟁점은 국제법상 국가가 이러한 범죄를 기소할 의무의 범위입니다.

마지막으로 세 번째 쟁점은 형법의 소급금지 원칙이나 공소시효와 같이 불법 입양의 기소를 가로막을 수 있는 잠재적 장애물과 관련됩니다.

I. 불법 입양과 국제 범죄

먼저, 2022년 9월에 유엔의 두 개의 조약 기구인 강제실종위원회와 아동권리위원회, 그리고 네 개의 특별 절차 기구(아동 판매 및 성적 착취 특별보고관, 인신매매 특별보고관, 과도기 정의 특별보고관, 강제 또는 비자발적 실종 실무그룹)가 불법 국가 간 입양에 관한 공동 성명을 채택했다는 점을 상기하고자 합니다. 성명서의 4항은 범죄와 관련되어 다음과 같이 명시하고 있습니다.

“불법 국가 간 입양은 아동의 납치, 판매, 또는 인신매매 금지를 위반할 수 있으며, 특정 상황에서는 강제 실종 금지를 위반할 수도 있습니다. 국제법에서 규정하는 특정 조건 하에서, 불법 국가 간 입양은 집단학살 또는 인도에 반한 범죄와 같은 중대한 범죄를 구성할 수도 있습니다.”[1]

여기서는 인도에 반한 범죄, 강제 실종, 그리고 강제실종으로부터 모든 사람을 보호하기 위한 협약(ICPPED) 제25조에 포함된 특정 범죄에 초점을 맞추겠습니다.

A. 인도에 반한 범죄

1. RuSHA 사건

불법, 심지어 불법 국가 간 입양 문제는 전후 국제 형사 사건 중 하나인 이른바 “RuSHA[2] 사건”[3]에서 상당 부분 다뤄졌다는 점을 상기할 필요가 있습니다.

이 사건은 나치가 “우수한 인종적 특성”을 지녔다고 판단한 점령 지역 주민의 “게르만화” 정책과 관련됩니다. 이 계획에는 아동 납치 및 독일 내 입양이 포함되었으며[4], 피고인들에 대한 1번 기소 항목에서 다음과 같이 기소되었습니다.

“기소 항목 1 [...] 본 항목은 이러한 ‘행위, 행동, 계획 및 사업이 외국 국가 및 민족 집단의 파괴를 목표로 한 체계적인 집단학살 프로그램의 일환으로 수행되었으며, 일부는 국가적 특성의 제거와 억압을 통해 이루어졌다’고 주장합니다. 이 프로그램의 목적은 개인에게 나치 및 독일적 특성을 부과하고 ‘원하지 않는’ 인종 요소를 제거함으로써 독일 국민과 소위 ‘아리안’ 인종을 강화하는 것이었습니다. 이 프로그램은 다음을 통해 일부 수행되었습니다.

- a) 아동 납치
- b) 낙태
- c) 동부 노동자 유아 강탈
- d) 독일인과의 성관계에 대한 처벌 [...] [5]”

판결문은 1941년 6월 18일 히틀러가 서명한 편지를 증거로 인용하고 있습니다.

“특히 우수한 인종적 특성을 가진 폴란드 가정의 어린 아이들을 우리 특별 아동 시설과 어린이집에서 보호하고 교육하는 것이 적절하다고 생각합니다. 아이들의 보호는 건강상 위험 때문에 이루어졌다고 설명해야 합니다. ... 6개월 후, 허용 가능한 것으로 판정된 아이들의 계보와 출생 문서를 확보해야 합니다. 1년이 지나면, 이러한 아이들을 우수한 인종의 무자녀 가정에 위탁 아동으로 제공하는 것을 고려해야 합니다.”[6]

점령지 동부에 거주하는 비독일 여성과 SS 구성원 간의 성관계로 임신이 발생한 경우, 해당 여성이 “우수 혈통”으로 평가되지 않으면 낙태가 시행되어야 했습니다[7]. 이 경우, 아이는 어머니로부터 강제로 분리되어 독일로 보내졌고, 외국인을 위한 아동 보호소에 배치되거나 “개별 가정”에 입양되었습니다.

검사는 이 계획을 설명하면서 “집단학살”이라는 용어를 사용했지만, 1945년 12월 20일 제정된 통제위원회법(Control Council Law) 10호에는 당시 개념적으로 새롭게 등장한 범죄(레믹의 연구를 통해 제시됨)가 포함되지 않았습니다. 따라서 1번 기소 항목에서 유죄 판결을 받은 피고인들은 인도에 반한 범죄와 전쟁범죄로 유죄 판결을 받았습니다.

제2차 세계대전의 경험을 바탕으로, 집단학살 범죄 예방 및 처벌에 관한 협약은 1948년 12월 9일 총회에서 채택되어 1951년 1월 12일 발효되었습니다[8]. 협약 제2조에는 “집단의 아동을 다른 집단으로 강제 전송하는 행위”가 포함되며, 이는 “국가적, 민족적, 인종적 또는 종교적 집단을 전부 또는 일부 파괴할 의도로” 수행될 경우 집단학살 행위로 간주됩니다.

2. 제2차 세계대전 이후 인도에 반한 범죄

인도에 반한 범죄는 옛 유고슬라비아 및 르완다를 다룬 임시 재판소의 법령에 포함되었으며, 해당 재판소들은 상당한 판례법을 발전시키고 구성 요소의 정의를 구체화했습니다. 일반적으로 로마 규정(Rome Statute) 제7조는 관습 국제법상 형성된 구성 요소를 재진술한 것으로 받아들여집니다.

“이 규정의 목적상, ‘인도에 반한 범죄’란 광범위하거나 체계적인 공격의 일환으로, 그 공격이 가해지는 사실을 인식한 상태에서 수행된 다음 행위 중 하나를 의미한다: [...]”

제7조 2항 a호는 ““광범위하거나 체계적인 공격이 민간인 집단을 대상으로 하는 경우”란 무엇인지 명확히 설명하며, 이는 “국가 또는 조직의 정책에 따라 또는 그러한 정책을 추진하면서 민간인 집단에 대해 제1항에서 언급된 행위들을 다수로 수행하는 행위의 과정”을 의미합니다.

ICTY, ICTR, ICC 및 시에라리온 특별법원(SCSL), 캄보디아 특별재판소(ECCT)와 같은 혼합 재판소들의 판례법은 제7조 1항에 포함된 다양한 개념의 정확한 의미를 추가로 명확히 했습니다.

제7조 1항은 특정 범죄들을 열거하며, 이 범죄들이 “민간인 집단을 대상으로 한 광범위하거나 체계적인 공격”의 맥락에서 수행될 경우 인도에 반한 범죄로 간주됩니다. 이러한 특정 행위 중 몇 가지는 불법 입양, 특히 국가 간 입양과 관련하여 적용될 수 있습니다.

- 인구 강제 추방 또는 강제 이동
- 국제법상 기본 규칙을 위반한 자유 박탈, 구금 또는 기타 심각한 신체적 자유 박탈
- 제3항에서 정의된 정치적, 인종적, 국가적, 민족적, 문화적, 종교적, 성별을 포함한 특정 집단 또는 단체에 대한 박해 또는 국제법상 허용되지 않는 기타 사유에 따른 박해
- 강제 실종
- 고의적으로 큰 고통을 야기하거나 신체적·정신적 건강에 심각한 피해를 주는 기타 비인도적 행위

이 외에도, 아동을 대상으로 한 불법 입양 상황에서 행해진 경우, 사례의 구체적 상황에 따라 다음과 같은 행위도 적용될 수 있습니다.

- 노예화
- 고문
- 강간, 성적 노예, 강제 매춘, 강제 임신, 강제 불임, 또는 그와 동등한 중대한 성폭력 행위
- 아르헨티나에서의 기소 사례

제가 알고 있는 한 – 정보가 완전하지 않을 수 있으나 – 불법 입양이 인도에 반한 범죄로 성공적으로 기소된 사례는 아르헨티나에서만 발생했습니다.

이 나라에서는 군사 독재가 1976년부터 1983년까지 ‘콩도르 계획(Plan Condor)’ 등 지역 내 다른 국가들과 협력하여 광범위한 강제 실종 캠페인을 벌였다는 점을 상기할 필요가 있습니다. 약 30,000명이 실종되었으며, 전국의 은밀한 구금 시설에서 투옥되고 고문을 당했으며, 많은 경우 사망했습니다. 실종자 중에는 임신한 여성도 포함되어 있었으며, 이들은 구금 중 출산을 강요당했습니다. 이들의 아기들은 강제로 빼앗겨 신원이 위조된 채 불법 입양되었으며, 대부분은 독재 정권과 가까운 가정에 입양되었습니다. 약 400명의 아동이 ‘탈취’된 것으로 추정됩니다. ‘마요 광장 할머니들’은 그때부터 아동들을 찾기 위해 노력해 왔으며, 140명 이상을 확인했지만 여전히 수색은 진행 중입니다. 이 실종과 불법 입양과 관련하여 여러 사건이 사법 절차에 회부되었습니다.

‘체계적 아동 탈취 계획(systematic plan of minors appropriation)’ 사건 중 Sampallo Barragán 사건, Rivas 외(Quintana를 대표) 대 Pleé 사건은 Mirta Mabel Barragán(‘Barragán’)과 Leonardo Rubén Sampallo의 아기 탈취와 관련되어 있습니다. Mirta는 체포 당시 임신 6개월이었습니다. 그녀의 아기는 전 육군 대위에 의해 탈취되어 위조된 출생 증명서와 함께 그의 친구 Osvaldo Rivas와 Maria Cristiana María Cristina Gómez Pinto에게 전달되었습니다. 다음은 Oxford Reports on International Law에 게재된 사건 요약 발췌입니다.

“F5 2008년 4월 4일, 연방 형사 제4심 법원은 (a) Rivas에게 공문서 내용 위조 및 10세 미만 아동 유괴·은닉 공동 범행자 및 공문서 내용 위조 행위자로서 8년 징역과 8년 민사상 자격 박탈을 선고하였고, (b) Pinto에게 10세 미만 아동 유괴·은닉 공동 범행자로서 7년 징역과 7년 민사상 자격 박탈을 선고하였으며, (c) Berthier는 10세 미만 아동 유괴·은닉 방조범으로 판결했습니다. 기타 여러 혐의는 무죄 판결을 받았습니다.

F6 변호인은 시효 적용을 요구하며 대법원에 항소했습니다. 공소 측과 민간 고소인도 일부 무죄 판결과 대법원 최종 판결에 대해 항소를 제기했습니다.

대법원은 2009년 9월 8일 판결을 내렸습니다:

F8 대법원 제4부 판사들은 사건에 시효를 적용하지 않은 연방 형사 제5심 법원의 결정을 만장일치로 유지하기로 결정했습니다. 또한 제4부 판사들은 범죄가 연방 형사 법원이 분석한 바와 같이 인도에 반한 범죄에 해당한다고 만장일치로 판결하였으며, 일부 유죄 판결을 취소하고, 법원 절차 내 권한 범위에서 10세 미만 아동의 신원 및 부모 지위 변경 범죄를 유죄 판결에 포함하도록 혐의를 수정했습니다.”

신원과 부모 지위 삭제 및 문서 위조 범죄는 법원에서 “사람을 강제로 실종시키기 위해 설계된 계획 실행의 일부”로 판단되어 인도에 반한 범죄로 간주되었습니다.

4. 아동 강제 추방 및 강제 이송의 국제형사재판소(ICC) 전쟁 범죄로서의 기소

비록 국제형사재판소가 불법 입양을 인도에 반한 범죄를 통해 직접 다루지는 않았지만, 2024년 6월 24일, ICC 예비심사 제2부는 러시아 연방 대통령 블라디미르 푸틴과 아동 권리 담당 위원 마리아 알렉세예브나 르보바-벨로바에 대해 체포영장을 발부했습니다. 이들은 “점령된 우크라이나 지역에서 러시아 연방으로의 인구(아동) 불법 추방 및 인구(아동) 불법 이송이라는 전쟁 범죄”에 대해 책임이 있는 것으로 추정됩니다(로마규정 8조 2항 (a)(vii) 및 8조 2항 (b)(viii) 적용).

이 혐의는 러시아가 우크라이나 아동을 강제로 추방하거나(점령 지역 내 강제 이송) 여러 상황에서 강제 이동시킨 사건과 관련됩니다. 일부 아동은 고아원에서 데려와 러시아의 위탁 가정에 배치되었으며, 일부는 부모로부터 또는 부모 사망 후 빼앗긴 것으로 알려졌고, 일부는 러시아 가정에 입양된 것으로 추정됩니다. 현상 규모와 러시아 가정으로 입양된 아동 수는 정확히 확인되지 않았지만, 특히 OHCHR에서 사례가 문서화되었습니다. 우크라이나는 “아이들을 되돌려보내기(brings kids back)”라는 프로젝트를 시작했으며, 약 19,546명의 아동이 추방 또는 이송되었고, 그중 1,819명이 귀환한 것으로 보고하고 있습니다.

비록 이 사건은 전쟁 범죄 범주에서 다루어지고 있지만, 추방 및 강제 이송 범죄는 ICC 규정 제7조에 따라 인도에 반한 범죄로도 규정되어 있다는 점을 주목할 필요가 있습니다.

B. 강제 실종

강제 실종은 여러 국제 문서에서 정의되었으며, 현재 관습국제법과 강행규범(jus cogens)상 범죄로 인정되고 있습니다(아래에서 관련 사항 참조).

1994년 미주간 강제실종협약(InterAmerican Convention)은 제2조에서 강제 실종을 다음과 같이 정의합니다.

본 협약의 목적상, 강제 실종은 국가기관 또는 국가의 승인·지원·묵인 하에 행동하는 개인이나 집단이 사람의 자유를 어떠한 방식으로든 박탈한 후, 그 자유 박탈 사실을 인정하지 않거나 행방에 관한 정보를 제공하지 않아 해당 개인이 법적 구제나 절차적 보장을 이용할 수 없게 만드는 행위로 간주한다.

서문 6항은 “강제 실종의 체계적인 관행은 인도에 반한 범죄를 구성한다”고 재확인합니다.

2006년 제정된 ‘모든 사람에 대한 강제 실종 방지 및 보호 국제협약’(ICPPED)은 제2조에서 다음과 같이 정의합니다.

본 협약의 목적상, “강제 실종”은 국가기관 또는 국가의 승인·지원·묵인 하에 행동하는 개인이나 집단이 체포, 구금, 납치 또는 기타 형태로 자유를 박탈하고, 그 자유 박탈을 인정하지 않거나 실종자의 행방을 은폐함으로써 그 사람을 법의 보호 밖에 놓이게 하는 행위로 간주된다.

제3조는 국가 당사국이 “제2조에 정의된 행위를 국가 승인 없이 저지른 개인이나 집단을 조사하고 책임자를 사법 처리할 적절한 조치를 취할 의무”를 명시합니다.

제4조는 국가가 “강제 실종을 형사법상 범죄로 규정하도록 필요한 조치를 취할 의무”를 규정합니다. 일반적으로 이는 국가가 형법에 새로운 ‘자율적’ 범죄(인도에 반한 범죄와 같은 다른 범주와 연계되지 않은 범죄)를 포함하도록 입법할 의무로 해석됩니다. 다만 제2조 정의가 현재 관습국제법을 반영한다고 여겨지는 만큼, 법원이 관습법상 범죄로 인정하고 적용하는 것으로도 이 의무가 충족될 수 있습니다.

또한 국가 당사국은 제7조에 따라 “강제 실종 범죄가 그 극심한 심각성을 고려한 적절한 형벌로 처벌되도록” 하고, 특히 미성년자 강제 실종에 대한 가중 처벌 요건을 마련할 의무가 있습니다.

협약 서문 5항은 강제 실종의 극심한 심각성을 상기시키며, “국제법이 정한 특정 상황에서는 인도에 반한 범죄”가 될 수 있음을 명시합니다. 제5조는 다음과 같이 규정합니다.

강제 실종의 광범위하거나 체계적인 관행은 적용 가능한 국제법상 인도에 반한 범죄를 구성하며, 해당 국제법에 따른 결과를 초래한다.

국제형사재판소(ICC) 로마규정 제7조 2항 i호는 인도에 반한 범죄로서의 강제 실종을 다음과 같이 정의합니다.

“강제 실종”이란 국가 또는 정치 조직의 승인, 지원 또는 묵인 하에 사람을 체포, 구금, 납치한 뒤 자유 박탈 사실을 인정하지 않거나 행방을 알리지 않아 장기간 법의 보호 밖에 두려는 의도로 행하는 행위를 의미한다.

이 정의를 기준으로 보면, 불법 입양—국제 입양을 포함—의 많은 사례가 강제 실종 범죄를 구성한다고 볼 수 있습니다. 이는 협약상 ‘자율 범죄’로서 혹은 인도에 반한 범죄로서 적용될 수 있으나, 단 조건적 요소(광범위하거나 체계적인 공격 맥락에서 발생했고, 가해자가 이를 인지했는지 여부)도 충족되어야 합니다.

예를 들어, 미주인권재판소(InterAmerican Court of Human Rights) Gelman v. Uruguay 사건에서 마리아 클라우디아 가르시아 이루레타고예나 데 겔만은 임신 말기에 부에노스아이레스에서 강제 실종의 피해자가 되었고, 우루과이로 옮겨져 딸을 출산한 후 우루과이 가정에 입양되었습니다. 법원은 그녀의 딸 마리아 마카레나 겔만 가르시아가 실제 신원을 회복한 사실을 고려하여, 다음과 같이 판단했습니다.

“임신한 어머니가 다른 국가로 이송되어 딸의 신원이 억압된 것은, 동일한 목적이나 효과를 가진 강제 실종의 특별한 형태로 평가될 수 있다.”

비슷한 사례로, Liliana Clelia Fontana Deharbe는 임신 2개월 만에 납치되었고, 실종 중 Pedro Sandoval Fontana를 출산했습니다. 아르헨티나 법원은 도둑 맞은 아동의 입양부 Victor Enrique Rei가 저지른 행위를 강제 실종으로 인정했습니다.

불법 입양은 다양한 상황에서 발생합니다. 따라서 강제 실종 정의의 적용은 사례별로 검토되어야 합니다. 최소한 아동 납치와 불법 입양의 일반적 패턴에 대해 테스트가 가능합니다.

정치적 탄압, 대규모 범죄, 전쟁 범죄와 연계된 경우에는 적용이 명확합니다. 예를 들어, 아르헨티나의 사례나 특정 인구를 대상으로 한 공격의 일환으로 행해진 불법 입양 등이 이에 해당합니다.

Contreras v. El Salvador 사건에서, 미주인권재판소는 반란 진압 전략의 일환으로 아동 납치를 판단하고, 다음과 같이 결론지었습니다.

“당시 전략 하에서, ‘적대적 인구’와 분리하고 국가 이념 하에서 교육시키기 위해 아동을 납치하는 것이 유용하다고 판단되었다.”

군사 작전 중 가족이 처형되거나 도주한 후 아동이 납치되었고, 군 지도자들이 자녀로 편입하기도 했습니다. 증언에 따르면 1982년부터 공격 중 발견된 아동을 데려오라는 명령을 받았으며, 일부 아동은 입양을 위해 유출되었습니다. 대부분은 미국, 프랑스, 이탈리아 등 외국 가정에 입양되었습니다.

Contreras 사건에서, 법원은 납치 및 유출된 아동이 강제 실종의 피해자라고 결론 내렸습니다. Herminia Contreras의 경우 2006년 신원이 확인될 때 강제 실종이 종료된 것으로 분류되었습니다.

이 외에도, 일반 범죄나 아동 인신매매와 관련된 패턴에도 적용될 수 있습니다. 예를 들어, 출산 직후 산모에게 아동이 사망했다고 속이고, 아동을 고아원이나 은밀한 장소로 이송한 뒤 위조된

신분으로 입양시키는 경우가 있습니다. 이 과정은 공무원이나 민간기관, 인신매매 조직이 수행할 수 있으며, 종종 국가 당국의 묵인이나 공모가 수반됩니다.

이러한 경우, 강제 실종의 모든 요소가 충족됩니다.

- 요소 1: “모든 형태의 자유 박탈” → 신생아 납치
- 요소 2: “국가 기관 또는 국가 승인·지원·묵인 하에 행위” → 공무원 혹은 국가 묵인 하 민간인
- 요소 2-2: 인도에 반한 범죄로서 국가/정치 조직 승인 관련 요소 → 무장단체 등 비국가 행위자 포함
- 요소 3: “자유 박탈을 인정하지 않거나 행방 은폐” → 산모에게 아동 사망 통보, 신분 위조로 회수 불가
- 요소 4: “법의 보호 밖으로 배치” → 신분 회복 불가, 법적 구제 차단, 인권 침해
- 요소 4-2: 인도에 반한 범죄로서 “장기간 법의 보호에서 제외할 의도” → 아동의 신분을 위조하고 원래 가족과 법적 보호로부터 제거

유사한 패턴에는, 예를 들어 보육시설에 맡긴 아동이 갑자기 사라지거나, 편지와 약속을 통해 입양을 강요받고 다시는 아동을 볼 수 없는 상황, 외국 가정에 맡긴다는 약속으로 속임을 당한 사례 등이 포함될 수 있습니다.

C. 특정 범죄: 아동의 부당한 이송, 문서 위조·은폐·파기

ICPPED 제25조는 국가 당사국에 추가적 의무를 부과하며, 형사 문제도 포함됩니다. 제1항과 제2항에 따르면 다음과 같습니다.

1. 각 당사국은 형법상 필요한 조치를 취하여 다음을 예방하고 처벌해야 한다.
 - (a) 강제 실종의 대상이 된 아동, 부모나 법적 보호자가 강제 실종된 아동, 또는 강제 실종된 어머니의 구금 중 출생한 아동의 부당한 이송
 - (b) 위 (a)항에서 언급한 아동의 진정한 신원을 증명하는 문서의 위조, 은폐 또는 파기

강제 실종위원회는 일반적으로 국가 당사국이 이러한 특정 범죄를 형법에 포함하도록 검토할 것을 권장합니다. 이 범죄들은 강제 실종과 관련하여 *lex specialis*(특별법)로 간주되지 않으며, (a)항의 문구에서 분명히 나타나 있습니다: “강제 실종의 대상이 된 아동의 부당한 이송 [...]”

즉, 아동의 강제 실종, 아동의 부당한 이송, 아동의 진정한 신원을 증명하는 문서의 위조·은폐·파기는 동일 사건에서 누적적 유죄 판결로 인정될 수 있습니다. 아동을 납치하고 그 행방이나 신분을 은폐하여 법의 보호 밖으로 배치하는 경우가 강제 실종에 해당합니다. 일부 사건에서는 조사 결과 강제 실종이 아동의 신분 위조 및 입양을 통한 부당한 이송으로 이어진 것으로 판단될 수 있으며, 이는 추가 범죄로 간주됩니다.

II. 국제법상 불법 입양에 대한 기소 의무

국가는 관습 국제법과 조약 모두에 따라 불법 입양을 기소할 의무를 지니고 있습니다. 이러한 의무는 조약과 국제 관습법에서 비롯됩니다.

유엔 인권위원회(국제인권규약(ICCPR) 수호 기관)는 일반 논평 31호[22]에서, 강제 실종을 포함한 심각한 인권 침해에 책임이 있는 자가 사법적 책임을 지도록 보장하는 권리의 일부로서 국가의 의무를 강조합니다.

“18. 제15항에서 언급된 조사가 특정 규약상의 권리 침해를 드러낼 경우, 당사국은 책임자를 사법적 절차에 회부해야 한다. 조사 실패와 마찬가지로, 이러한 침해 행위의 가해자를 사법적 절차에 회부하지 않는 것도 규약 위반으로 간주될 수 있다. 이러한 의무는 특히 국내법 또는 국제법상 범죄로 인정되는 침해 행위, 예컨대 고문 및 유사한 잔혹·비인도적·굴욕적 행위(제7조), 즉결·임의적 살인(제6조), 강제 실종(제7조, 제9조 및 종종 제6조)에 대해 적용된다. 이러한 침해 행위에 대한 면책 문제는 위원회가 지속적으로 우려하는 사항이며, 침해 재발의 중요한 원인이 될 수 있다. 민간인을 상대로 한 광범위하거나 조직적인 공격의 일환으로 이러한 침해가 발생할 경우, 이는 국제형사재판소 로마규정 제7조에 따라 인도에 대한 범죄로 간주된다.”

국가의 조사 및 기소 의무는 다른 인권 조약에서도 찾아볼 수 있습니다. 고문 방지 조약은 고문 행위에 대해 당사국이 관할권을 설정해야 하는 의무(제5조), 국가 영토 외에서 발생한 행위에 대한 관할권(“역외 관할권”), 예비 조사 수행, 피의자 구금(제6조), 기소 또는 송환(*aut dedere, aut judicare*, 제7조)을 규정합니다. ICCPED에서도 유사한 규정이 존재합니다(제9~11조). 또한, ICCPED 제12조 1항은 “강제 실종 당사자가 있다고 주장하는 개인이 관할 당국에 사실을 보고할 권리와, 당국이 이를 신속·공정하게 조사하고 필요 시 즉시 철저히하고 공정한 조사를 수행할 의무”를 명시합니다. 제12조 2항은 “정식 고소가 없더라도 강제 실종이 발생했다고 합리적으로 믿을 근거가 있을 경우 조사 의무가 존재함”을 규정합니다. 조사 책임 기관과 관련된 구체적 조건은 같은 조 3항에서 명시됩니다.

국가의 조사·기소 의무는 피해자의 “강제 실종 경위, 조사 진행 및 결과, 실종자의 행방을 알 권리”(제24조 2항 ICCPED)와 대응됩니다. 진실 권리는 또한 국가가 “실종자를 수색, 위치 확인, 석방하고, 사망 시 시신을 찾아 존중하며 반환할 모든 적절한 조치”를 취할 의무를 수반합니다(제24조 3항 ICCPED).

제네바 협약은 국가가 전쟁 범죄를 조사하고, 책임자를 기소하거나 재판 또는 송환해야 할 의무를 명시합니다(제1제네바협약 49조, 제2제네바협약 50조, 제3제네바협약 129조, 제4제네바협약 146조). 이 규칙은 관습 국제법의 일부이기도 합니다[24].

1948년 집단학살방지조약(제4조, 제6조)과 관습 국제법에 따른 집단학살 범죄와 관련하여 유사한 의무가 존재합니다.

인도에 대한 범죄와 관련하여, 국제법위원회는 2019년 “인도에 대한 범죄의 예방 및 처벌에 관한 예비 조문”을 채택하여 관습 국제법을 성문화했습니다[25]. 서문에서 위원회는 인도에 대한 범죄 금지가 일반 국제법의 강행규범(*jus cogens*)임을 인정하며, “모든 국가는 인도에 대한 범죄에 관해 형사 관할권을 행사할 의무가 있다”고 명시합니다. 제7~10조 예비 조문은 고문 방지 조약 및 ICCPED와 유사하게 국가의 조사, 예비 조치, 기소 또는 송환 의무를 규정합니다.

국제기구 외에도, 여러 인권 재판소나 위원회가 국가의 심각한 인권 침해(인도에 대한 범죄 및 강제 실종 포함) 조사·기소 의무를 재확인한 사례가 있습니다. 예를 들어, 앞서 언급된 Gelman 사건에서 미주인권재판소는 조사 의무와 피해자의 진실 권리와 관계를 강조했습니다:

“183. 본 재판소는 국가의 인권 침해 조사·처벌 의무의 중요성을 강조하였다. 특히 강제 실종 금지와 관련한 조사 및 처벌 의무는 *jus cogens* 성격에 도달하였다.
[...]

185. 강제 실종과 관련하여 피해자가 법적 구제를 이용할 수 없는 경우, 직계 가족이나 근접 인물이 신속하고 효과적인 절차 또는 사법적 구제에 접근할 수 있어야 한다.

186. 강제 실종이 의심되는 경우, 고소 여부와 관계없이 조사가 개시되어야 한다. 이 의무는 국제법 및 일반 보장 의무에 따라 *ex officio*, 지체 없이, 신속·공정·효과적으로 수행되어야 한다. 조사는 가능한 모든 법적 수단을 활용하여 진실을 확보하는 것을 목표로 한다. 이는 이러한 상황으로 영향을 받는 권리를 보호하기 위한 근본적 요소이다. 모든 국가 기관, 공무원, 강제 실종 사건과 관련 정보를 접한 개인은 이를 즉시 신고해야 한다.
[...]

187. 진실 권리의 집단적 차원 충족을 위해 가능한 한 완전한 역사적 기록을 절차적으로 결정해야 하며, 공동 행위의 패턴과 각 참여자의 역할 및 책임을 식별해야 한다.”[26]

Goiburu 사건에서는 강제 실종 금지 및 이에 대한 조사·처벌 의무가 *jus cogens*, 즉 국제법상 강행규범의 지위를 갖는다고 명시했습니다[27]. Contreras 사건에서는 진실위원회와 같은 기관 설립이 “국가가 사법 절차를 통해 진실을 확립해야 하는 의무를 대체하거나 충족하지 못한다”고 명확히 했습니다[28].

III. 불법 입양 기소에 대한 잠재적 장애물

불법 입양 기소에 대한 장애물로 무엇이 주장될 수 있을까요? 유엔 인권위원회는 일반 논평 31호에서, 사면, 감형, 면책 등 책임자를 면제할 수 있는 주장들을 다루었습니다.

“[P]ublic officials 또는 국가 대리인이 이 조항에 언급된 규약상의 권리를 침해한 경우, 당사국은 특정 사면(일반 논평 20(44) 참조)이나 이전 법적 면책, 배상과 같이 가해자를 개인적 책임으로부터 면제할 수 없다. 또한, 공식적 직위가 이러한 침해 책임이 있는 자가 법적 책임을 면하는 근거가 될 수 없다. 상급자의 명령에 따른 방어, 적용 가능한 경우 지나치게 짧은 소멸시효 등 법적 책임 확립에 대한 다른 장애물도 제거되어야 한다. 당사국은 또한 국내법 또는 국제법상 처벌 대상이 되는 행위를 저지른 혐의자를 사법 절차에 회부하는 데 상호 협력해야 한다.”

여기서는 특히 유괴 및 불법 입양 사례에서 주장되는 두 가지 문제, 즉 범죄의 소급 불가 원칙과 소멸시효를 다루겠습니다.

이러한 주장들은 “아동의 불법 인도(wrongful removal)”와 아동 신원 위조에 관련된 불법 입양의 기소를 막는 근거가 될 수 없습니다. 그 이유는 불법 입양이 연속적 범죄(continuous act)라는 점에

있으며, 두 가지 주요 결과를 낳습니다:

- a) 소멸시효가 존재하더라도, 범죄가 종료될 때, 즉 아동이 성인이 되어 진정한 신원을 회복할 때 시작됩니다.
- b) 마찬가지로, 불법 입양에 적용되는 법은 범죄 종료 시 적용되는 법, 즉 아동이 자신의 신원을 회복할 때의 법입니다.

강제 실종을 연속적 범죄로 다룬 유엔 강제실종 실무그룹은 다음과 같이 언급했습니다:

“[E]nforced disappearances are prototypical continuous acts. The act begins at the time of the abduction and extends for the whole period of time that the crime is not complete, that is until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual. [...] Even if some aspects of the violation may have been completed before the entry into force of the relevant national or international instrument, if other parts of the violation are still continuing, until such time as the victim’s fate or whereabouts are established, the matter should be heard, and should not be fragmented.”[29]

실무그룹은 이러한 연속성의 형사법적 함의를 다음과 같이 정리했습니다:

“[I]n criminal law, the Working Group is of the opinion that one consequence of the continuing character of enforced disappearance is that it is possible to convict someone for enforced disappearance on the basis of a legal instrument that was enacted after the enforced disappearance began, notwithstanding the fundamental principle of non-retroactivity. The crime cannot be separated, and the conviction should cover the enforced disappearance as a whole.”

ICPPED 제8조는 연속적 특성을 고려하여 강제 실종 범죄의 소멸시효에 관한 규정을 두고 있습니다:

1. 소멸시효를 적용하는 당사국은 다음을 보장해야 한다:
 - (a) 소멸시효 기간은 장기간이며 범죄의 극심한 심각성에 비례해야 한다.
 - (b) 범죄 종료 시점부터 소멸시효가 시작되도록 해야 한다.
2. 당사국은 강제 실종 피해자가 소멸시효 기간 동안 효과적 구제를 받을 권리를 보장해야 한다.

2022년 유엔 공동성명은 불법 국제 입양에 대해 “국가는 불법 국제 입양을 연속적 범죄로 금지해야 하며” “아동 피해자가 고소하기 어려운 점과 범죄의 연속적 특성을 고려하여 소멸시효가 사법적 구제 접근에 장애가 되지 않도록 보장해야 한다”고 명시합니다[30].

Radilla-Pacheco v. 멕시코 사건[31]에서 미주인권재판소는 강제 실종의 연속적 성격과 소급 불가 원칙을 반대했습니다:

“240. 국가가 가해자가 퇴직하여 범죄 정의가 시행되기 이전이라 적용할 수 없다는 주장은 받아들일 수 없다. 피해자의 행방이 확인되지 않는 한, 강제 실종은 불변하며 공무원의 지위 변화에 영향을 받지 않는다.

241. *nullum crimen nulla poena sine lege praevia* 원칙에 따라, 강제 실종은 본 사건 사실에 적용되는 법적 분류를 구성한다.”

재판소는 페루 헌법재판소의 *Villegas Namuche* 사건 등 여러 판례를 인용하며, 연속적 범죄의 경우 범죄 종료 시점의 법이 적용될 수 있음을 확인했습니다[32].

아르헨티나 “체계적 아기 유괴 계획 I” 사건[33]에서는 법원이 “각 사건에 적용될 법은 범죄가 종료된 시점의 법을 기준으로 결정해야 한다”고 판단했습니다. 종료 시점이 확정되지 않은 경우, 10세 미만 아동의 유괴·억류·은폐가 증명된 판결 시점의 법이 적용됩니다.

칠레 대법원은 *Juan Manuel Contreras Sepúlveda* 사건에서 1975년 1월 7일 발생한 유괴에 대해 사면법을 적용하지 않고, 범죄의 연속성을 인정하여 형법 141조(유괴)를 근거로 유죄를 확정했습니다[34].

유럽인권재판소도 유사한 입장을 취했습니다. 예를 들어, *Boban Šimšić v. 보스니아 헤르체고비나* 사건[37]에서 1992년 발생한 행위가 2003년 형법 시행 후 2007년 유죄 판결을 받았지만, 소급 불가 원칙 위반은 없다고 판단했습니다.

소멸시효와 관련하여, 집단학살과 인도에 대한 범죄는 일반적으로 불가벌(*imprescriptible*)로 인정됩니다. 이는 관습 국제법 규범이며, 로마규정 제29조 등 여러 조약과 법령에 반영되어 있습니다[38][39].

결론적으로, 아동 유괴와 불법 입양은 아동이 진정한 신원을 회복할 때까지 연속적 범죄로 간주되므로, 소급 불가 원칙이나 소멸시효가 기소를 막을 수 없습니다. 기소는 형법에 강제 실종이 규정되어 있는 경우 이를 근거로 할 수 있으며, 사후법(*ex post facto*) 적용도 가능합니다. 또한, 임의 구금, 유괴, 은폐, 신원 위조 등 관련 범죄로 기소할 수도 있으며, 이 경우 연속적 범죄로 간주됩니다. 소멸시효가 적용된다면, 범죄 종료 시점까지 시작되지 않습니다.

추가로, 아동 유괴와 불법 입양이 민간인에 대한 광범위하거나 조직적인 공격과 연계되어 인도에 대한 범죄로 기소되는 경우, 소급 불가 원칙과 소멸시효는 적용되지 않습니다. 이는 a) 제노사이드, 인도에 반한 범죄, 전쟁범죄는 1950년대 이후 국제법상 이미 범죄로 인정되어 사후법으로 기소 가능하고, b) 이러한 심각한 국제범죄는 불가벌로 간주되기 때문입니다.

제2차 세계대전 관련 범죄에서, 프랑스 대법원은 *Klaus Barbie* 사건에서 1964년 법이 인도에 대한 범죄와 불가벌성을 단순히 “확인”했을 뿐 이미 국제법상 확립되어 있었다고 판결했습니다.

유럽인권재판소는 일반적으로, 유럽인권협약 제7조 1항의 소급 불가 원칙이 국제법상 심각한 범죄를 규정하는 법 시행 후 발생한 행위에 대한 기소를 막지 않는다고 명시했습니다. *Boban Šimšić* 사건에서는 1992년 발생한 행위가 2003년 형법 시행 후 2007년 유죄 판결을 받았지만, 제7조 1항 위반은 없다고 판단했습니다.

결론적으로, 불법 입양과 아동 유괴는 연속적 범죄로 간주되므로, 소급 불가 원칙과 소멸시효는 기소에 장애가 되지 않습니다.

*본 논문은 아직 작업 중인 워킹 페이지이며, 추후 변경될 수 있습니다. 또한 본 논문의 한국어 버전은 AI의 도움으로 영어에서 한국어로 번역된 것으로, 일부 내용에 경미한 오류가 있을 수 있음을 알려드립니다.

** 본 논문에 표현된 견해는 개인적인 것이며, 강제실종위원회 또는 유엔의 공식 입장을 반드시 반영하는 것은 아닙니다.

[1] Footnotes omitted. *Joint statement on illegal intercountry adoption*, CED/C/9, 5 December 2022.

[2] That is the “SS Race and Resettlement Office”.

[3] United States v. Ulrich Greifelt, et al, “RuSHA case” before the US Military Tribunal in Nuremberg under Control Council Law n°10, TWC, vol. V.

[4] https://en.wikipedia.org/wiki/Kidnapping_of_children_by_Nazi_Germany

[5] “RuSHA case”, p. 89.

[6] “RuSHA case”, p. 103.

[7] *Id.*, p. 109.

[8] The Republic of Korea acceded to the Genocide Convention on 14 October 1950.

[9] For a complete overview see the Document “Dossier de sentencias pronunciadas en juicios de Lesa Humanidad en Argentina”, updated in 2024,

https://www.mpf.gob.ar/lesa/files/2025/03/LH_Dossier_actualizacion-diciembre_2024-2.pdf

[10]

<https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimir-ovich-putin-and>

[11] See OHCHR report, *The impact of the armed conflict and occupation on children’s rights in Ukraine*, 24 February 2022-31 December 2024, , §§ 74-85.

[12] <https://www.bringkidsback.org.ua/>

[13] The Republic of Korea acceded to the Convention On 4 January 2023.

[14] The Republic of Korea ratified the Rome Statute on 13 November 2002.

[15] IACtHR, *Case Gelman v. Uruguay*, judgement of February 24, 2011 (Merits and Reparations).

[16] Sentencia condenatoria por crímenes contra la humanidad en contra el Comandante de Gendarmería Victor Enrique Rei por sustracción de menores, 30 April 2009, Google translation from Spanish to English.

[17] IACtHR, *Case of Contreras and others v. El Salvador*, judgement of August 31, 2011 (Merits, Reparations, and Costs), par. 53.

[18] *Id.*, par. 54. In connection with El Salvador, see also IACtHR, *Case of the Serrano-Cruz Sisters v. El Salvador*, judgement of March 1, 2005 (Merits, Reparations and Costs) and *Case of Rochac Hernandez and others v. Salvador*, judgement of October 2014 (Merits, Reparations and Costs). About similar practices in Guatemala, IACtHR, *Case of the “Las Dos Erres” Massacre v. Guatemala*, judgement of November 24, 2009 (Preliminary objection, Merits, Reparations and Costs).

[19] IACtHR, *Case of Contreras and others v. El Salvador*, judgement of August 31, 2011 (Merits, Reparations, and Costs), par. 92.

[20] See IACtHR, *Case of Contreras and others v. El Salvador*, judgement of August 31, 2011 (Merits, Reparations, and Costs), par. 88-89: “88. Thus forced disappearance also leads to a violation of the right to recognition of juridical personality established in Article 3 of the American Convention given that forced disappearance seeks not only one of the most serious ways of removing a person from the whole sphere of the legal system, but also denies his existence and leaves him in a sort of limbo or situation of juridical uncertainty before society and the State, especially when his identity has been altered illegally.

89. It has been proved that many of the disappeared children were registered under false information or had their personal data altered, as in the case of Gregoria Herminia. The effects of this are twofold: on the one hand, for the children who were appropriated, it makes it impossible to find their family and to learn their biological identity and, on the other, for the family of origin, who are prevented from exercising the legal remedies to re-establish the biological identity and the family ties and end the deprivation of liberty. [...] That violation only ceases when the truth about the identity is revealed in some way and the victims are guaranteed the legal and real possibility of recovering their true identity and, where appropriate, the family ties, with the pertinent legal consequences.”

[21] Note however that this intentional element and its temporary component is not part of the definition of enforced disappearances under international customary law : see African Extraordinary Chambers, *Ministère public v. Hissène Habré*, judgement, 30 May 2016, par. 1471; Kosovo Specialist Chambers, *Public redacted version of Decision on the Confirmation of the Indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, KSC-BC-2020-06, par. 77: “[U]nder customary international law as applicable at the relevant time, there is no need to demonstrate or even presume the special intention of the perpetrators to remove the victim from the protection of the law.”

[22] General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant CCPR/C/21/Rev.1/Add. 13 26 May 2004 Adopted on 29 March 2004 (2187th meeting).

[23] The Republic of Korea acceded to the ICCPR on 10 April 1990.

[24] See Rule 158 of Customary IHL identified in the 2005 ICRC study.

[25] See the ICL report, A/74/10, Chapter IV, p. 10.

[26] IACtHR, *Case Gelman v. Uruguay*, judgement of February 24, 2011 (Merits and Reparations). Footnotes omitted.

[27] IACtHR, *Case of Goiburú and others v. Paraguay*, judgement of September 22, 2006, par. 84.

[28] IACtHR, *Case of Contreras and others v. El Salvador*, judgement of August 31, 2011 (Merits, Reparations, and Costs), par. 135.

[29] UN Working Group on Enforced or Involuntary Disappearances, *General comment on enforced disappearances as a continuous crime*, UN doc. A/HRC/16/48, par. 39.

[30] UN Joint statement, CED/C/, par. 12.

[31] IACtHR, *Case of Radilla-Pacheco v. Mexico*, Judgement of November 23, 2009 (Preliminary Objections, Merits, Reparations, and Costs), par. 240-241.

[32] The case can be found here : <https://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html> Google translation from Spanish to English. See also a presentation of the case in the Oxford reports: *ILDC 332* (PE 2004), 18 March 2004.

[33] Índice de la Sentencia recaída en el marco de las causas N° 1351, 1499, 1584, 1604, 1730 y 1772 del Registro del Tribunal Oral en lo Criminal Federal N° 6.

[34] *Sepúlveda (Juan Manuel Contreras), Re and ors, Action to annul*, Rol No 517-2004, ILDC 394 (CL 2004), 17th December 2004, Chile; Supreme Court.

[35] ECtHR, Grand Chamber, case of Rohlena v. the Czech Republic *Application no. 59552/08*, judgement of 27 January 2015, par. 63-70.

[36] Cour de Cassation, chambre criminelle, 24 mai 2018, 17-86.340, Bull. See also the decision by the Constitutional Council in the same case n°2019-785 QPC, 24 May 2009 recognizing the constitutionality of the suspension of statute of limitation for continuous crimes.

[37] ECtHR, Application n°51552/10, Decision of 10 April 2012. See also, on command responsibility, ECtHR, *Case of Milanković v. Croatia (Application no. 33351/20)*, judgement of 20 January 2022.

[38] See the International Law Commission Draft articles on prevention and punishment of crimes against humanity, article 6, and its commentary: A/74/10, pp. 77-78.

종합토론

좌장: 허상수, 제2기 진실과화해 위원회 위원

1. 장완익, 변호사
2. 복지부
3. 행안부/경찰
4. 법무부

토론문



장완익 (변호사)

1. ‘사실인정과 입증책임’은 진실.화해를위한 과거사조사위원회(이하 진화위)를 포함한 모든 조사위원회가 공통적으로 안고 있는 문제이다.
2. 그래서 조사위원회들은 조사 활동을 시작하면서 각 위원회 나름의 기준을 정한다. 대부분의 조사위원회는 그들이 수집할 수 있는 자료나 확보할 수 있는 진술을 중심으로 하여 결정을 내려야 하는데, 이때 각 위원회가 세운 기준들이 결정적인 역할을 하며, 이런 기준을 통하여 내린 조사위원회의 결정은 법원에서도 대부분 인정된다.
3. 그런데 조사위원회가 법원의 판단까지 염두에 두고 기준을 정하게 되면, 법원이 요구하는 엄격한 입증책임을 그대로 따라 조사위원회의 기준을 정하게 되는 경향이 있다.
4. 실제로 1기 진화위의 진실규명결정 중에는 법원에서 배척되어 청구가 기각된 경우도 있다.
5. 법률상 추정 규정이 있어서 입증책임이 전환된 사례를 소개한다.
6. ‘친일반민족행위자 재산의 국가귀속에 관한 특별법’ 제2조 제2호는 “친일반민족행위자의 재산(이하 "친일재산"이라 한다)”이라 함은 친일반민족행위자가 국권침탈이 시작된 러·일전쟁 개전시부터 1945년 8월 15일까지 일본제국주의에 협력한 대가로 취득하거나 이를 상속받은 재산 또는 친일재산임을 알면서 유증·증여를 받은 재산을 말한다. 이 경우 러·일전쟁 개전시부터 1945년 8월 15일까지 친일반민족행위자가 취득한 재산은 친일행위의 대가로 취득한 재산으로 추정한다.고 정하고 있다.
7. 이 조항과 관련한 위헌소원에서 헌법재판소는 ‘어떠한 재산이 친일협력의 대가로 취득한 재산인지 여부를 국가측이 일일이 입증하는 것은 심히 곤란한 상태인 반면, 일반적으로 재산의 취득자 또는 그 후손들은 재산취득과 관련된 자료를 보관하고 있다거나 그 재산의 취득내역을 가장 잘 알고 있을 개연성이 높다고 할 수 있으므로, 재산 취득자 측에게 재산 취득 경위를 입증하도록 하는 것이 현저히 부당하다고 볼 수 없다’ (2011. 3. 31. 2008헌바141, 2009헌바14.19.36.247.352, 2010헌바91(병합))고 합헌 결정을 하였다.
8. ‘진실.화해를 위한 과거사정리 기본법’을 개정하는 과정에서 이와 유사한 추정 규정을 넣는 것도 생각해 볼 수 있다. 시행령도 개정하여야 할 것이므로 이 과정에서라도 진화위의 진실규명결정과 관련하여 진화위가 스스로 마련한 기준에 따라 결정을 하여야 한다는 규정을 신설하는 것도 고려하여야 한다.

9. 그래서 3기 진화위가 발족한다면 우선하여 할 일 중에 하나는 1기, 2기 진화위가 진실규명결정 기준을 어떻게 정하였는지 살펴보고 그에 따른 문제점을 잘 파악하여, 3기 진화위의 결정 기준을 정하고 이를 법령에 반영하도록 노력하고 위원회 조사규칙에도 반영하여야 할 것이다.
10. 이 과정에서 다른 조사위원회가 결정을 위한 기준을 어떻게 세워서 적용하였는지도 같이 살펴보면 좋을 것이다. 물론 그러한 결정 기준이 법원의 판단에 어떠한 영향을 미쳤는지도 확인하여야 할 것이다.
11. 해외 입양과 관련하여 ‘개인정보 보호법’이 해외입양인의 진실 찾기를 막는 거대한 장벽으로 등장하였다.
12. 가장 좋은 방안은 ‘개인정보 보호법’의 개정을 통하여 해외 입양인에 대한 특례 규정을 신설하여 권리를 완벽하게 보장 받을 수 있도록 하는 것이며, ‘진실.화해를 위한 과거사정리 기본법’에 ‘개인정보 보호법’ 적용의 예외 규정을 두어서 입양인의 완전한 개인정보를 확보할 수 있도록 하는 것이 가능할 것이다.
13. 진화위 조사에 장벽이 있어서는 안된다.

복지부

행안부/경찰

질의 응답

허상수, 제2기 진실과화해 위원회 위원

폐회식

폐회사



한분영, 덴마크 한국인 진상규명 그룹 공동 대표

존경하는 내빈 여러분, 동료 여러분, 그리고 친구 여러분,

오늘의 중요한 컨퍼런스를 마무리하며, 먼저 지식과 전문성을 나눠주신 모든 분들께, 그리고 무엇보다 개인적인 경험을 용기 있게 공유해주신 분들께 깊은 감사의 말씀을 드립니다.

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감사합니다.

International Conference on
Adoption Truth

International Conference on Adoption Truth:

Crime Against Humanity, Enforced Disappearance and Forced Adoptions

The conference proceedings are provided in three languages, Korean English and French
본 자료집은 한글본과 영문본으로 구성되어있습니다

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International Conference on Adoption Truth

Crimes Against Humanity, Enforced

- When: 2025 Nov. 26, 14:00-17:30
- Hosts - KoRoot, DKRG, Children's Rights Solidarity

Venue: The National Assembly Members' Building, Conference Room 2

Introduction and Welcoming	
14:00-14:15	Moderator - Boon Young HAN (Co-Representative DKRG)
	Opening Speech - Peter MØLLER (Co-Representative KoRoot)
	Welcoming Speech - Do Hyun KIM (Co-Representative KoRoot), Min Ho CHO (Co-Representative Children's Rights Solidarity)
	Congratulatory Speech - National Assembly Representative In Sun NAM, Sang Sik LEE, Hae In YOUNG, Young Seok SEO
Testimonies from Victims of Enforced Disappearance	
14:15-15:15	Session Chair - Hyung Sook LEE (Position)
	<i>24 Years Taken by Hope Welfare Center: I Did Not Want to Go There</i> Bong So CHEON
	<i>Adoption as Enforced Disappearance: The Testimony of a Korean Child Adopted to France</i> Aurélie TOUVÉ (video)
	<i>From Declared 'Death at Birth' to Adopted Abroad: My Search for the Truth</i> Marie Louise WANG (video)
	<i>I lost lost my child without even knowing the meaning of adoption</i> Yong Keum SONG
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15:15-15:30	Session Chair - Seok Tae LEE (Former Constitutional Court Justice)
	<i>Transitional Justice and Legal Methodologies: Focused on Fact-finding and Burden of Proof</i> Jae Sung LEE (Professor, Konkuk University, School of Law)
BREAK	
Keynote Speaker	
15:45-16:15	Session Chair - Seok Tae LEE (Former Constitutional Court Justice)
	<i>Obligation of States to Prosecute Forced Adoptions as Crimes Against Humanity and/or Enforced Disappearances under International Law</i> Olivier de FROUVILLE (Professor of Public Law at Paris-Panthéon-Assas University Director of the Paris Human Rights Center and Former Chair, The UN Committee on Enforced Disappearances)
Discussants	
16:15-17:00	Session Chair - Sang Su HUH (Commissioner, Truth and Reconciliation Commission)
	1. Wan Ik JANG (Lawyer, Haemaru Law Firm) 2. Ministry of Health and Welfare 3. Police

Q&A	
17:00-17:30	Session Chair - Sang Su HUH (Commissioner, Truth and Reconciliation Commission)
Closing	
17:30-17:40	Closing Remarks - Boon Young HAN (Co-Representative DKRG)

Introduction and Welcoming

Opening Remarks



Peter MØLLER, Co-representative of KoRoot, Co-representative of DKRG

On 26 March 2025, the TRC issued its first conclusions regarding adoptions from Korea. The adoption system was characterised as unconstitutional and as involving massive violations of human rights.

The TRC's report described the systematic fabrication of adoptees' identities and background information; the absence of valid consent from adoptees' biological parents; false narratives of poverty; and invented information about the adoptee and their biological families.

The TRC also detailed how children's homes and institutions, in collaboration with state-accredited Korean adoption companies such as Holt and KSS, functioned as ruthless feeder channels and international suppliers of children in order to satisfy a rising demand for Korean children from childless couples.

In its reports, the TRC has described the most horrific human rights violations under the Korean dictatorship in the Korean concentration camps such as Brothers Home, Huimangwon and Cheongsungwon, where children and adults were interned for decades and subjected to forced labour under slave-like conditions, degrading treatment, violence, and abuse.

The children who were not considered suitable for forced labour in these concentration camps were sent abroad through adoption, laundered in the children's homes of the adoption industry, and by the merchants of the adoption industry in the form of so-called adoption agencies in Korea, to countries such as the United States, Denmark, Norway, and Australia.

The biological parents of the adoptees do not know the fate of their children. We adoptees do not know our true origins.

The Korean and international adoption industry knows the truth, but has for decades skillfully enveloped the world in narratives that adoption is God's will, and that the child, through the adoption process, was reborn in the name of God into a new and Christian life.

In Europe, the adoption industry has for decades persuaded the world that poor children are simply lined up waiting to be rescued by wealthy and well-meaning childless couples. Adoption has been described in Europe as family formation, and through these false narratives, the right of childless couples to form a family by adopting a foreign child has become the deprivation of another family's and another child's right to family.

Since the beginning of adoption in Korea, adoption has been regarded as a health and welfare matter. In the receiving countries, adoption has been treated as a matter of inheritance law. It has never been approached as a matter of fundamental civil or human rights. There have been several occasions where politicians in Korea and international media have raised concerns about the legality and ethics of these international adoptions, but those voices were silenced.

At our Adoption Truth conference on 10–11 September, which addressed the TRC’s report, the conclusion was clear: adoption is not a health and welfare issue — what we are looking at is crime.

Theft of children, abductions, identity forgery, document falsification, the sale of children for financial gain, children falsely declared dead to their biological families, children deceived or forcibly separated from their families, coercion, extortion, and corruption.

It is therefore misleading even to speak of adoption and adoption agencies. The terminology conceals what truly happened. What we are dealing with is crime, where the adoptee was treated as a commodity, and where the term “forcibly displaced” is far more accurate than “adopted”. The adoption agencies in Korea demonstrably did not conduct a single legitimate adoption. Their task was to procure children who had been ordered by adoption agencies in the receiving countries and by private individuals in those countries. It is therefore misleading to describe them as adoption agencies; they should instead be called child procurers or child brokers.

The TRC states that the Korean state and private firms accredited to act on behalf of the Korean state were responsible for the horrific events that occurred in international adoptions, and that they either directly participated in or approved the criminal acts that enabled the extensive trade in Korean children.

We adoptees are not doing this for revenge or compensation. That has never been the purpose of why I and other adoptees initiated this work.

What we want is for those responsible for human trafficking and criminal acts to be held to account within the framework of international law, and for both the sending country, Korea, and the receiving countries to fulfil their international obligations to investigate, prosecute, and punish the responsible persons and organisations.

Korea ratified the Rome Statute in 2005, which establishes that enforced disappearance is a serious crime against humanity and is not subject to limitation. In 2007, Korea implemented this international treaty through a special domestic criminal law, popularly known as the ICC Crimes Act.

The criminal elements of enforced disappearance, as described directly in the treaty, were made punishable in Korea.

In 2023, this was supplemented by Korea’s ratification of the UN Convention on Enforced Disappearance, which, like the Rome Statute and the Korean ICC Crimes Act, obligates states to investigate, prosecute, and punish cases of enforced disappearance.

Article 6 of the Korean Constitution is unequivocal: treaties and conventions ratified by Korea are to be regarded as Korean law. Furthermore, Article 6 states that international customary law must also be regarded as valid Korean law.

The criminal acts we are examining today were also criminalised in the 1970s, 80s, 90s, and up to today. It is the very same criminal provisions that applied then as apply now.

Theft of children, abduction, document forgery, human trafficking, etc., were crimes then — just as they are crimes today.

The defining characteristics of enforced disappearance and crimes against humanity are that they are not isolated incidents, but ongoing, continuous crimes over time, and therefore not subject to limitation.

The continuous crimes that the TRC's report, and we adoptees, have uncovered have long surpassed the dates at which conventions and national laws entered into force. A kidnapping that took place in 1980 is still a kidnapping in 2025, and the theft of a child in the 1970s is still a crime in 2025 and will continue to be so until the crime ceases.

Even though enforced disappearance is criminalised internationally in treaties, conventions, and Korean law, nothing is being done. My question is: how many more treaties, conventions, and national laws must be created before action follows?

In Korea and Denmark, criminal complaints have been filed referring to the obligations under the Rome Statute and ICPPED, but very little has happened.

From us adoptees, the answer is clear: we do not need more treaties, conventions, and laws in which Korea and other countries promise to act. We want to see action — and we want to see it now.

The purpose of this conference is to highlight precisely the paradox between assumed national obligations and the absence of action.

With these words, I would like to welcome you all to this conference — both those who are physically present and all of you following from around the world online.

Welcome Speech



Do-hyun KIM, Co-representative of KoRoot

Distinguished Guests, Ladies and Gentlemen,

I extend my sincere greetings to all of you. It is my honor to welcome each of you to this “International Conference on Adoption Truth: Crimes Against Humanity – Enforced Disappearances and Forced Adoptions”. I also wish to express my gratitude to those joining us remotely, who are supporting this conference through virtual participation.

The Second Truth and Reconciliation Commission has determined that systemic state violence embedded within the frameworks and practices regulating overseas adoption led to the suffering and loss of 56 individuals. In response to this finding, the Commission recommended an official apology. On October 1, President Lee Jae-myung expressed his deep empathy for the pain endured by overseas adoptees and responded with a formal apology in accordance with the Commission’s recommendation.

Over the past seventy years, Korea has been a country actively engaged in overseas adoption. Simultaneously, this long history reflects a sustained pattern in which the rights of children were systematically compromised. One factor contributing to the persistence of these circumstances is the perception of overseas adoption as a “Glowing Image” by both sending and receiving countries. This symbolic image has, over time, played a role in normalizing or justifying actions that, in reality, constitute serious violations. For instance, the creation of ‘orphan registries’ involved collusion among adoption agencies, local government offices, and family courts, and clearly constitutes illegal activity. Yet, the positive public perception of overseas adoption has frequently prevented such acts from being acknowledged as wrong. While no good intention can ever justify a violation of law, these structures remained in place for an extended period. Enforced disappearances and forced adoptions must be understood within this context as well. In many cases, overseas adoption involves child abduction and falsification of identity—acts that are unequivocally criminal. Nevertheless, the positive image associated with adoption often obscured these crimes and allowed them to go unpunished.

The “International Conference on Adoption Truth: Crimes Against Humanity – Enforced Disappearances and Forced Adoptions” provides a forum to examine the symbolic power exercised by overseas adoption over the past seventy years and the mechanisms by which violations were normalized. Through this conference, we aim to meticulously document the harms inflicted upon children and biological families, and to establish foundations for restorative justice for victims and their families.

Finally, I would like to express my gratitude to DKRG, the Children's Rights Solidarity, and Representative Nam In-soon, as well as all other Members of the National Assembly who co-hosted this event. Above all, I would like to express my heartfelt gratitude to Dr. Olivier de Frouville, who will deliver today's keynote speech; to the witnesses sharing their personal stories with us—Jeon Bong-su, Song Yong-geum, Aurelie Touve, and Marie Louise Wang; to Professor Lee Jae-seung, who will present; to former Constitutional Court Justice Lee Seok-tae, Mr. Heo Sang-su of the Truth and Reconciliation Commission, and Dr. Lee Hyung-sook, who are serving as chairs; and to lawyer Jang Wan-ik, along with all the other panelists participating in the discussion. I warmly welcome and thank all participants for their presence.

Congratulatory Speech



In Sun NAM, Member of Parliament

Greetings. I am Nam In-soon, Member of the National Assembly of the Republic of Korea, representing Songpa-gu B of the Democratic Party of Korea and serving on the Health and Welfare Committee.

It is highly meaningful to jointly host today's International Conference on the Truth About Adoption: Crimes Against Humanity – Enforced Disappearance and Forced Adoption at the National Assembly. I extend my sincere appreciation to my fellow co-hosting Members of Parliament — Lee Sang-sik, Seo Young-seok, and Yong Hye-in — as well as to Root Home, the Denmark Korean Rights Group (DKRG), the Child Rights Solidarity, and all other partners and organisations in Korea and abroad.

In March of this year, the Truth and Reconciliation Commission, after two years and seven months of investigation, acknowledged various human rights violations that occurred during overseas adoption processes and recommended an official state apology. Horrific cases were confirmed in which children were forcibly adopted overseas after being falsely registered as orphans despite having living parents. This decision marked the first official acknowledgement of state responsibility for human rights violations in past overseas adoptions.

Although the Commission's decision is meaningful because it formally recognised the human rights violations suffered by overseas adoptees, only 56 out of 367 applicants received recognition of state responsibility, and many cases were rejected on the grounds of "insufficient documentation." Considering that past overseas adoptions themselves were fundamentally based on identity falsification and forged records, lack of documentation must not be used as a basis to deny victims' claims.

In particular, properly defining the issue of overseas adoption within the original framework and concept of **"enforced disappearance"** is the essential starting point for establishing the truth. This perspective was also confirmed during the Commission's investigation, and a comprehensive review of systematic problems — such as forced separation, record tampering, and adoption without consent — continues to be urgently required.

Last August, I introduced a bill to amend the Framework Act on Clearing Up Past Affairs for Truth and Reconciliation, expanding the scope of inquiry to include human rights violations that occurred in adoption agencies, in addition to social welfare institutions and mass care facilities previously operated by private bodies. I will do my utmost to ensure its passage without delay.

Since 19 July this year, all adoption procedures have officially transitioned from a private-agency-centred system to a public system managed directly by the state and local governments. However, there is still much work to be done, including support for DNA testing to help locate biological families, the establishment of a national information-linkage system, and the expansion of adoptees' rights to request access to records.

The state must not evade responsibility and must establish concrete and practical measures to help heal the lifelong wounds of victims. Following the official apology, improvements must include: the development of an effective adoption information system, the guarantee of adoptees' right to origins, and remedies for identity falsification. As a member of the Health and Welfare Committee, I will ensure that these tasks are implemented thoroughly through to the end.

Once again, I sincerely thank everyone who has participated today, and I wish you good health, happiness, and peace. Thank you.

Congratulatory Speech



Sang Sik LEE, Member of Parliament

Hello, everyone. I am National Assembly Member **Sang-sik Lee**.

I would like to express my sincere gratitude to all of you for attending today's forum on International Conference on Adoption Truth: Crimes Against Humanity, Enforced Disappearance and Forced Adoptions. In particular, I extend my deep appreciation to the representatives of **KoRoot** and the **Danish Korean Rights Group (DKRG)** for organizing this event, as well as to the members of the National Assembly In Sun Nam, Hae In Young and Young Seok Seo who co-hosted this forum and all participating organizations.

The reason we have gathered here today is to confront the long-ignored truths concealed within the overseas adoption process and the serious human rights violations that occurred, and to search for ways to address them.

It is estimated that from 1955 to 1999, approximately **141,700** children were sent abroad for adoption. During that period, adoption agencies were involved in every step of the process—from securing children to arranging their departure—leading to severe problems such as the industrialization of overseas adoption and the commodification of children.

On **March 25, 2025**, the **Truth and Reconciliation Commission (TRC)** formally concluded that overseas adoption was the structural result of the Korean state's ongoing and unjust exercise of public authority. This decision serves as both a wake-up call and a stern indictment of the Korean government and civil society, which have long regarded overseas adoption as a form of "benevolent welfare" for children.

However, among the **367 petitions** submitted to the TRC, only **56 cases** resulted in the acknowledgment of state responsibility, while the remaining **311 cases** were dismissed or suspended. Considering that overseas adoption was fundamentally based on identity manipulation and document falsification, it is unjust to deny victims' claims on the grounds of "insufficient documentation." Such decisions violate the rights of overseas adoptees to identity—to know their own birth information and to seek their origins.

I hope that today's discussion will serve as a meaningful step toward correcting the human rights violations that occurred in the overseas adoption system, and as a foundation for overseas adoptees' continued pursuit of their rights. I, too, promise to do everything within my power in the National Assembly to advance this work.

Thank you.

Congratulatory Speech



Hae In YOUNG, Member of Parliament

Hello,

I am Yong Hye-in, National Assembly Member and Leader of the Basic Income Party.

The Republic of Korea is a State Party to the UN Convention for the Protection of All Persons from Enforced Disappearance. However, the government's efforts to uncover the truth about the crimes of illegal overseas adoption and enforced disappearance perpetrated since the 1970s have been woefully insufficient. The Second Truth and Reconciliation Commission approved only 98 out of 367 applications submitted regarding illegal overseas adoptions, and even among those, 42 were placed "on hold." Despite the victims' consistent testimony, the state effectively abandoned its responsibility to provide redress on the grounds that formal documentation was lacking.

Because of the nature of enforced disappearance, there is a high likelihood that documents were fabricated or destroyed, and in many cases, records may never have been created in the first place. The state must not dismiss the need to uncover the truth of these crimes against humanity simply due to missing formal paperwork, nor should it evade responsibility for state-sponsored violence.

In numerous decisions by international human rights courts, where a significant disparity exists in access to evidence between victims and perpetrators, and where systematic human rights violations have already been established, the burden of proof is placed on the state rather than on the claimant. Under Germany's Federal Indemnification Law for Nazi victims, once persecution against a particular group and the victim's belonging to that group are demonstrated, the victimization is recognized. The Third Truth and Reconciliation Commission must also actively consider adopting standards for recognizing victims of enforced disappearance and shifting the burden of proof to the state.

Today's forum aims to raise awareness of the gravity of illegal overseas adoptions and enforced disappearance, and to explore the perspectives and methods needed for meaningful truth-finding. I extend my gratitude to KoRoot, the Danish Korean Rights Group, Child Rights Network Korea, and the senior and fellow lawmakers who have joined us in making this important gathering possible.

I would also like to thank the presenters and discussants—including Mr. Olivier de Frouville, former Chair of the UN Committee on Enforced Disappearance—for their dedicated efforts to uncover the truth

and ensure the rights of victims. Above all, I express my respect and solidarity to Mr. Jun Bong-su and all survivors of enforced disappearance who have bravely shared their experiences.

In April, the Basic Income Party introduced a full amendment to the Framework Act on Clearing Up Past Affairs as a party initiative, calling for uninterrupted truth-finding. Going forward, we will do our utmost to ensure that, through the Third Truth and Reconciliation Commission, the full truth of enforced disappearance committed during the overseas adoption process is brought to light, and that the honor of survivors who have long suffered due to the state's neglect and irresponsibility is swiftly restored.

Thank you.

Congratulatory Speech



Young Seok SEO, Member of Parliament

[Greetings. I am Seo Young-seok, Member of the National Assembly representing Bucheon-si (Gap), Gyeonggi Province, and a member of the National Assembly's Health and Welfare Committee of the Minjoo Party of Korea—also known as the “People’s Vitamin.”

I sincerely congratulate you on the hosting of the *International Conference on the Truth of Adoption – Crimes Against Humanity: Enforced Disappearance and Forced Adoption*. I extend my gratitude to my fellow co-hosts, Members of the National Assembly Nam In-soon, Yong Hye-in, and Lee Sang-sik, and I express my deep respect for the dedication of KoRoot, the Denmark Korean Rights Group (DKRG), Child Rights Solidarity, and the many organisations of adoptees in Korea and abroad. I also want to convey my respect and solidarity to the victims who have bravely fought for many years to expose the heavy truth of enforced disappearance and forced adoption.

In March of this year, the Truth and Reconciliation Commission officially recognised falsified records, forced separation, concealment and neglect, and manipulation of birth information that occurred during the overseas adoption processes in the 1980s as human rights violations and structural violence, for which the State bears responsibility. This represents a significant milestone in which the truth long asserted by the victims has been confirmed by a State institution, and it clearly underscores the urgent tasks that the State must now resolve responsibly.

Although our adoption system has recently transitioned from a private agency-based structure to a public adoption framework, the institutional foundations are not yet sufficient. Legislative and structural improvements are necessary to ensure the reliable functioning of this public system, including securing the authenticity of adoption records, strengthening support systems for victims, ensuring procedural transparency, and reinforcing post-adoption oversight.

As a member of the Health and Welfare Committee of the National Assembly, I am committed to ensuring the stable establishment of the public adoption system and the expansion of rights for domestic and overseas adoptees. The testimonies of survivor-victims that will be shared today, along with the discussions held within the international community, represent urgent issues that Korean society must address without delay. I will do my utmost to ensure that these voices lead to real and impactful policy change within the National Assembly.

Once again, I congratulate you on the hosting of this international conference, and I pledge to continue working in solidarity to advance truth-seeking and accountability for the victims of enforced disappearance and forced adoption.

Thank you.

Testimonies From Victims of Enforced Disappearance

Moderator: Hyung Sook LEE

24 Years Taken by Hope Welfare Center: I Did Not Want to Go There

Bong So CHEON

Adoption as Enforced Disappearance: The Testimony of a Korean Child Adopted in France

Aurélie TOUVÉ

From Declared “Dead at Birth” to Adoption Abroad: My Search for the Truth

Marie Louise WANG

I lost lost my child without even knowing the meaning of adoption

Yong Keum SONG

24 Years Taken by Hope Welfare Center: I Did Not Want to Go There



Bong So CHEON

Hello.

My name is Jeon Bong-su, born in 1964, and I live in Daegu.

I was originally born in 1964, but Hope Welfare Center (Hopecenter / Heemangwon) forcibly changed my birth year to 1958, so I am now living as someone born in 1958.

I was born and raised in Onyang, Chungcheongnam-do. My family has nine siblings, and I am the seventh. I have two younger sisters. While living in Onyang, I worked at car washes, construction sites, and painting jobs.

One day in November 1998, I was hanging around Cheonan Station when a monk told me he would buy me a bowl of gukbap, so I followed him—and I was forcibly taken and ended up at Hope Welfare Center. After that, I was taken into Hope Welfare Center completely against my will. As soon as I arrived, I was put in solitary confinement. One day they told me to come out, so I came out of the cell. After that, I started living in a group with many other residents.

While I was locked up in Hope Welfare Center, I knew my parents' names and my home address. But they only kept me confined and never let me out, so I couldn't say that I wanted to go home, and no one at the center ever tried to find my family.

Inside Hope Welfare Center, I made bags. We started at 9:30 in the morning and worked until 5 in the evening. At that time, my monthly pay was 50,000 won.

Living in the facility, I saw many people die, and I also saw people try to run away and then get caught and brought back. So I thought, "I shouldn't try to run away." And I was actually beaten as well.

Then one day, I heard that some people from the center were going outside to live. A friend I was close to was going to live outside too, so I began to think that I also wanted to leave and live on my own. In July 2022, I was able to leave through the Naro Center.

After leaving the facility, I went to school and worked. One day, someone who had also lived in Hope Welfare Center said they had something to ask me, and we started talking. The conversation turned to my family, and since I knew my home address and my parents' names, I went with a teacher to the police station.

At the police station, I told them my home address and my parents' names, and they issued a resident registration copy for me. That was when I learned my real age. I asked the police to find my family, and after about three hours, I got a call from the police station saying they had found them. That is how I met my family again after 24 years.

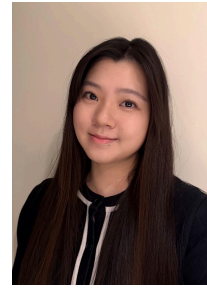
I regret the youth I lost during the 24 years I lived in Hope Welfare Center. If I had not been kidnapped and taken there, if they had not changed my age, I would have met my family earlier and continued living in Onyang. I am very angry.

So I filed a lawsuit to receive an apology from the Republic of Korea, but the government claims that I went to Hope Welfare Center because I *wanted* to. I did not go there because I wanted to. It is unjust. I hope the truth will be uncovered and that I will receive an apology.

And I hope that people like me who were confined in facilities and harmed will receive help and be able to live their lives.

Thank you.

From Declared ‘Dead at Birth’ to Adopted Abroad: My Search for the Truth



Marie Louise WANG

My name is Marie Louise. I’m 33 years old and an adoptee living in Denmark.

And for a long time, I lived a life built on a story that never actually belonged to me.

My adoptive parents believed it. I believed it. Because who questions an adoption facilitated by established agencies in Korea and Denmark, approved by governments, and wrapped in a narrative that sounds compassionate.

I was born in Seoul in June 1992. Not long after, I was sent to Denmark for overseas adoption. My adoption papers told a simple, sympathetic story: my birth mother was a young, unmarried college student, unable to care for a baby, and she made the heartbreaking decision to give me up, so I could have a good home where I was wanted. It was a story designed to make my adoption seem inevitable and clean.

But the truth. I think it was never meant to reach me, but in 2023 I discovered a well-kept document.

When I contacted the Korean Social Service and requested my adoption file, I was surprised to learn that the information I received did not match the original story I had always believed.

One document changed everything, with just a few lines.

The document I sit with here in my hands.

My birth mother came to a clinic when she was 34 weeks pregnant. She was healthy. I was healthy. There was nothing in the records to explain why she was suddenly put into induced labor which led to my premature birth. But she was. And after she gave birth, she was told that her baby—that I—had died.

She left the clinic believing I had died, but I didn’t.

I was handed over to the Korean Social Service by the doctor at the birth clinic and with “help” from a social worker from KSS.

My birth mother never gave me up. She was a victim of a cruel lie.

After uncovering that truth, I went back to KSS and asked them to explain.

They told me, they had the right consent for adoption - but that it was protected by privacy law.

But there is no consent in a situation like this. How could there be?

You cannot consent to sending your child for adoption, if you have been told that your baby is dead. And it wasn't something KSS was unaware of. They signed the papers.

It's devastating to learn that your beginning, your identity, was built on lies.

My adoption was not an act of love or necessity. It was a system separating a mother and her baby for profit.

A system that protected everyone except me, my adoptive parents, and my birth mother.

For years, this has been called an adoption, but it's time to look at it differently.

We need to call it what it truly is: an enforced disappearance.

Learning this truth is not the end of anything. It's the beginning of something new. It's searching for the truth - the whole truth.

I have come to learn, when you start asking real questions, people become uncomfortable.

Suddenly everything is hidden behind "privacy laws." DNA testing is denied because I'm "not missing."

And the agencies that claim to care about children - their wellbeing - fall silent.

My story that once seemed simple, revealed itself as a cover-up.

And the saddest part? I am not alone. Many adoptees are discovering that their beginnings were rewritten, sanitized, and built on lies.

So, what is next?

I wish for answers, so do my adoptive parents and my birth mother deserves answers.

No mother should live a lifetime believing her baby died, when it's alive.

This is not about one case. This is about everyone who was illegally adopted and it's about accountability.

South Korea has ratified the international convention against enforced disappearance. Those protections must apply. They must mean something.

I hope my story can spread some awareness.

I can only ask and hope for some accountability, because the systems that allowed this to happen and the people responsible, should not be able to keep pretending they are blameless.

Adoption as Enforced Disappearance: The Testimony of a Korean Child Adopted to France



Aurelie TOUVÉ

My name is Aurélie. I was born in South Korea on May 27, 1983, under the name KIM Bum Hee. I was adopted in France that same year.

Forty years after my birth, and after having found my biological family, I learned and understood in 2023 that I had not been abandoned. I was illegally adopted in the context of an international adoption. Following this discovery, I filed a complaint in December 2023 with the Public Prosecutor in France for enforced disappearance. It is now November 2025, and I am still waiting for an answer.

Everything I present here is based on documents that were disclosed to me drop by drop since 2023, on testimonies, and on steps undertaken jointly by my family with a lawyer in South Korea.

In September 2023, I went to visit the adoption agency in Seoul to obtain a copy of my file—a copy that would later turn out to be incomplete. My older sister took the time to read every single page. As she read through the file, several elements already raised questions for her. One document states that I was born to an “unmarried mother.” But this is false. My parents have now been married for more than fifty years. Another document claims that my mother personally brought me to the agency. This is also false, and she has always denied it. And yet this same document describes my family in detail: my parents’ education, their ages, their occupations, and the existence of my four older sisters. It even specifies that they are married, contradicting the previous statement. How did they know all this? It is impossible to obtain such precise information while the agency simultaneously declares in my file “father and mother unknown.”

Finally, the agency created an orphan registry in my name. How can such a registry be justified when they had complete information about my parents?

Faced with so many inconsistencies uncovered by my older sister through the Korean-language file, we decided to reconstruct the exact timeline of my birth with the help of our parents.

On May 27, 1983, the day I was born, my mother gave birth in a facility in Seongnam. It was not a public hospital but a birthing center for low-income families, whose name my mother still remembers clearly. The director of the birthing center suggested a temporary placement: to entrust me to a Christian family, assuring them that they could visit me and take me back whenever they wished. My parents agreed, convinced this was only a temporary solution.

According to the documents in my file, on May 28—the very day after my birth—I was admitted to the international adoption agency. This speed shows that the director had no intention of temporarily placing me, despite what he had told my parents. But when my parents returned to pick me up, I had, of course, disappeared.

The birth clinic itself had disappeared.

In its place stood a police station.

No trace, no records, no explanation.

And above all, no baby.

Members of the local parish told my parents that I had surely been sent for adoption to another country. Their baby vanished before they had the chance to bring me home. On August 5, 1983—just two months after my birth—my adoption in France was approved by the adoption agency and the French authorities. On September 16 of the same year, I arrived in France. I was barely four months old, and I went on to live a gentle and peaceful life with my adoptive family for the first twenty years of my life.

It was only in February 2003, the year I turned twenty, that I contacted the adoption agency from France. At that moment, I had no idea that my biological family had been searching for me since 1998. From that moment, reunification became possible. It even happened quickly. We were finally reunited, twenty years after my adoption.

Yet it was not until twenty more years had passed—when I obtained a copy of my file in 2023—that, in light of the cross-checking done with my older sister, my parents discovered that what they had lived through was neither an accident nor a result of negligence on their part, but in fact an organized taking of a child. And for the first time, I understood that my parents had come back for me not out of regret, but simply because that was always the plan.

They had never relinquished their parental rights.

Their daughter had disappeared from one day to the next.

I had never been abandoned.

I had been taken.

We then—my parents, my sisters, and myself—requested a meeting with the adoption agency a few days after my first visit. It was late September 2023. From that meeting onward, documents began to be revealed to me little by little.

First, the residency register that my father had been required to give to the director of the birthing center before leaving me there. Yet it did not appear in the copy of the file given to me. It was only during this meeting that it resurfaced after an hour of heated discussion. This residency register establishes the full

identity of my parents and my four sisters. That day, the adoption agency refused to return it to my parents or even give us a copy. We had to settle for taking a photo of it.

This document proves that the agency knew my family from the very beginning. It again contradicts the version that I had been abandoned and that I was born to unknown parents. One key element, however, remained missing: the adoption consent, which the agency claims to possess, but refuses to show us despite our repeated requests. The agency always provides the same justification: in their interpretation of the Special Adoption Law, they are not required to produce this document because it does not appear on the list of documents to be shared.

At this stage, my family and I understood that each document would appear only under pressure from a legal representative. My parents therefore hired a lawyer to obtain the adoption consent, to prove that it was falsified. This consent is the central document that would have authorized my departure. It concerns my birth, my identity, and the signature that was supposedly made by my mother.

Following the complaint filed in October 2024 by my lawyer with the Personal Information Protection Commission, I was given a letter written by my father in 1998—the letter he wrote when he discovered that I had been adopted abroad. Again, I had no copy of it in my file. And the agency had not mentioned it during my first visit. This letter had been hidden from me for twenty-five years. It took a lawyer to gain access to it.

After a long battle and many legal procedures, the adoption agency finally agreed in May 2024 to show us the adoption consent. It was shown to my lawyer and my parents—but only partially—and we were not allowed to take photos. Half of it was hidden, allegedly because it contains information about a person outside my family. Why is this person involved in a consent that is supposed to concern only my parents? And why is this person's identity concealed? The agency confirmed that this person is not my father—so how was I adopted without his consent? The visible section shows a fingerprint. My mother told my lawyer that it is not hers, and that the written signature is not in her handwriting either.

So who wrote it?

Who placed that fingerprint?

And under what circumstances?

The date on the consent is the day of my birth.

How could a mother who has just given birth sign an informed abandonment consent immediately after delivery? And why does my father—still married to my mother and holding joint parental authority—not appear?

For more than forty years, the adoption consent—the central document proving the illegality of my adoption—has remained inaccessible, deliberately withheld by the adoption agency. How can I establish that a crime was committed if evidence has been denied to me for more than forty years? If the agency uses a partially hidden document to claim that my adoption was lawful, then it should be the agency's

responsibility to prove that everything was done properly—not the opposite. Victims should not have to bear the burden of proving the illegality of a process imposed on them at birth.

This refusal to disclose personal archives is not an administrative issue.

It blocks the truth.

It prevents the reconstruction of events.

These events constitute an ongoing violation of my fundamental rights. It prolongs a disappearance that began in May 1983. Enforced disappearance is not limited to the act of taking someone. It includes the deliberate withholding of information that could explain what happened to a person. In my story, adoption does not erase the disappearance. It is part of it. As long as the key documents remain inaccessible, the violation continues.

I ask for full access to my file.

I ask for the disclosure of the adoption consent.

I ask for the identification of the person who signed in place of my mother.

I ask for the identity of the person who brought me to the adoption agency to be established.

I ask for the recognition of my taking as an enforced disappearance.

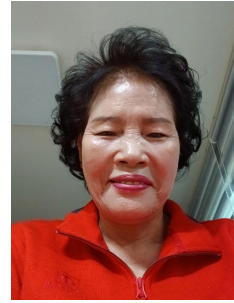
My Korean family and my adoptive family—both victims, just as I am—support my efforts and demand redress.

We are waiting for the facts to be established and for responsibilities to be clarified.

Thank you for listening.

I am Aurélie Tourné, Kim Bum Hee, and I have presented here what has been denied to me for more than forty years: access to the truth.

I lost my child without even knowing the meaning of adoption



Yong Keum SONG

I am the mother of Kim Bum Hee, a Korean adoptee sent to France. I gave birth to her in 1983 at a small maternity clinic. At that time, I already had four daughters. My husband was the oldest son in his family, so there was a lot of pressure to have a son. In those days, people said many harsh things to women who had only daughters. Our family was also struggling financially.

After I gave birth to my fifth daughter, I was very worried. The head of the clinic told me that a childless family would raise her well and mentioned a church deacon couple. We believed that this deacon couple would care for Bum Hee themselves. There was a church right next to our home, so I thought I would still be able to see my baby from a distance as she grew up. When I asked, the clinic director also told me it would be possible, and I felt relieved.

I thought hard, and I believed that maybe growing up in a better environment would be good for the baby. They said they needed our family registry to send her to a good home, so I even gave them the full document with all of our family information. I only wished for my baby to grow up well. But I had just given birth, and I was tired and confused. I could not make a proper decision in that state. I did not know this was adoption. And I certainly did not know it was overseas adoption. If I had known that I would not be able to see her grow up, I would never have let her go. Our lives changed completely in that moment, and the bond between us was cut without us, the parents, even understanding what was happening. There was no proper procedure, no counseling, and no consent form. Later, I learned later that the clinic director sent her straight to Holt as soon as we left the baby there. The story about the church deacon was only made up to deceive us.

After we came back home, my pain began. I could not eat or sleep. I cried alone and woke up in tears in the middle of the night. Not long after, I went back to the clinic because I felt I could not live without my baby. I wanted to bring her home. I do not remember the exact date, but my breasts were swollen and very painful because of the milk, so it was not long after the birth. But the clinic had already moved away. I had no way to know where my child was, or even if she was alive. People around me said the clinic probably sent her overseas for adoption and told me to give up looking for her.

From then on, my life did not feel like a real life. I lived with guilt and fear, thinking I had abandoned my child. I could not tell anyone. I cried alone for decades. Every Wednesday, I watched the TV program about finding separated families, hoping she might look for me. I cried in front of the TV for years. My family saw me crying and finally asked what was happening. Only then did my children and the rest of

my family learn about the adoption. My children searched many adoption agencies, and they finally found out that she had been sent to France through Holt. I felt relief knowing she was alive, but it was only for a moment. I was shocked that we had been deceived and that our baby had been taken so far away.

In 1998, We went to Holt and begged them to help us contact her, but they repeated that it was impossible because she was still a minor. Even when we moved, we always left our new contact information. We waited for her to find us. But Holt made no effort to connect us. They only told us to wait.

Finally, in January 2003, we received contact from Bum Hee through Holt. In July that year, she came to Korea with her French adoptive parents and met her Korean family.

Even after that, she suffered from depression and suicidal thoughts. In September 2023, she went to Holt to ask for the adoption papers and received copies. The staff told her, “Your parents signed on the adoption consent form, so that you were sent overseas.” This was different from what she had believed for more than 20 years. She became confused and felt betrayed, thinking we had lied to her. She was deeply hurt.

Only after she received the papers did I learn that there was something called an adoption consent form. I was shocked, because I had never put my fingerprint on such a document. Holt refused to show us the consent form and treated us very rudely. They kept insisting that I had signed it. I could not understand why they would not show it to us if that were true. We hired a lawyer and spent a lot of money. In the end, we were allowed to look at part of the form. Holt had repeatedly claimed that the parents’ fingerprints were on the document, but right before showing it to us, they suddenly changed their story. They said that a relative on the father’s side had agreed to adoption and signed it besides me. The handwriting and fingerprint were not mine, obviously. I had never written or signed such a document. The form contained the consent of a third person who was not the real parent or relative. Who decided my child’s adoption?

At a time when we were confused, pressured, and did not know what to do because we had not had a son, Holt deceived us and took our baby very easily. They did not give us time to think twice, or a chance to bring our baby back. They falsified the documents. They sent our baby to a faraway country where we could not meet her again. And for many years, they stood between us.

Who should now take responsibility for all the tears and pain that my family in Korea and my daughter in France have suffered for so long?

I want to hold the Korean government and Holt responsible.

— Interview summary by KoRoot —

Presentations

Session Chair

Seok Tae LEE, Former Constitutional Court Justice

Fact-Finding and Burden of Proof



Jae Sung LEE, Professor, Konkuk University, School of Law

1. The Problem

In truth-seeking processes, the most problematic area is fact-finding. In cases of human rights violations—such as disappearances, massacres, suspicious deaths, torture, sexual violence, cruel treatment, unlawful detention (or unlawful trials), and forced adoption—victims who cannot present direct evidence, or even evidence loosely connected to the case, are often not recognized as victims. If one were to require ordinary, high-probability evidence for what are, in essence, *plausible allegations*—claims that are highly likely in light of the circumstances at the time of the incident—then many cases would remain unresolved forever.

At the Truth and Reconciliation Commission, the primary categories of concern included: abductions, detention, disappearances, and suspicious deaths of civilians during the Korean War; kidnapping cases; deaths occurring after release from prison or within prison where only remains or a corpse were returned to the family; and forced adoption cases in which no public documents were produced or in which access to such documents was impossible.

However, the institutions responsible for overcoming these difficulties in fact-finding are national investigative commissions and the courts. Even when an application appears truthful, if public documents, press reports, or expert studies and conclusions are unavailable, many applications are dismissed, or investigations effectively halted while waiting for a more favorable evidentiary environment. Courts, in particular, rarely possess the capacity or conditions to uncover the truth in such cases. Without the victim's persistent efforts and the Commission's determinations, courts are reluctant to accept even highly plausible allegations. Because judicial decisions must always be cautious, this cannot be criticized as such. When the Commission does issue progressive decisions, courts sometimes follow with judgments favorable to victims.

In long-concealed cases, the central issue becomes whether victims should bear the burden of proof, or whether the state should be held responsible based on objective circumstances (customary practices), similar cases, or circumstantial evidence. Regarding adoptee cases, especially document fabrication or "paperless adoptions," new standards for recognizing victimization must be established. In certain types of cases, the principle of "*he who asserts must prove*" must be replaced with "*he who knows must prove*."

The Inter-American Court of Human Rights summarizes this approach in the principle: "**in cases of doubt, the benefit goes to the victim**" (*in dubio pro victima*). This means that state agencies involved

in surveillance, investigation, arrest, detention, or abduction bear the burden of rebutting a victim's plausible allegations.

To construct such a burden-of-proof framework, principles of burden-shifting and presumptions must be reflected in enabling laws, enforcement decrees, and Commission standards. In other words, fact-finding bodies must be given breathing room. Although current law allows for fines or penalties when implicated agencies fail to submit requested materials, from the perspective of a commission responsible for truth-seeking and victim remedy, such penalties are not as necessary as ensuring that failure to provide documents directly results in decisions favorable to victims. Similar principles already exist in civil litigation.

The African Commission on Human and Peoples' Rights places the burden of proof on governments in human-rights redress procedures, which is unusual. The Inter-American Commission must prove the factual basis of a petition when referring a case to the Inter-American Court. Generally, the person asserting a claim bears the burden of proof. However, since burden of proof becomes relevant only at the final stage—when evidence is in equipoise between both parties—burden-shifting can resolve cases without reaching that final stage. Where facts remain indeterminable (*non liquet*), the law places the burden on the claimant.

In many cases, international human-rights courts have recognized that the burden of proof shifts from the victim to the state depending on the stage of the proceedings, and if the state fails to present adequate rebuttal evidence, state responsibility is established.

Scholars point to two contexts justifying burden-shifting:

1. When there is a severe imbalance in access to information between the perpetrating state and the victim; and
2. When there is a systematic pattern of human rights violations.

These two factors may overlap.

For example, massacres of National Guidance League members during the Korean War or forced disappearances in Latin America were conducted covertly, on a large scale, and systematically—meeting both conditions.

Forced adoption also fits this model: adopted infants cannot understand their own situation; later access to information is difficult; and approximately 200,000 children were subjected to forced adoption under varying procedural patterns.

2. When There Is an Imbalance in Access to Evidence

When an applicant (plaintiff) claims that a human-rights violation occurred due to state action, the relevant agency has a duty to produce the associated materials. This duty arises from the state's obligation to protect the public and its obligation to reveal the truth, which correspond to the applicant's right to truth.

Problems with information provision occur at multiple stages:

- Information may never have been produced;
- It may have been concealed or destroyed;
- It may have been lawfully discarded under retention schedules; or
- Agencies may falsely claim documents do not exist, or selectively produce only peripheral materials.

In all such situations, if the relevant agency cannot submit appropriate rebuttal evidence, the victim's claims must be presumed true and state responsibility recognized.

Many cases illustrate this imbalance in access—this “tilted playing field.” For example, a student activist may pass the written exams for a state civil-service test but fail the interview for unknown reasons. Without disclosure of exam guidelines or criteria, the applicant cannot know why they were rejected. If the government refuses to provide such materials or cannot give adequate explanation, wrongful exercise of state power can be inferred.

Another example: a healthy person taken to an intelligence agency for questioning is returned to their family a few days later, dead. The family cannot know what happened. In such cases, international bodies hold that the burden of proof shifts.

The Inter-American Court has repeatedly ruled, especially in forced disappearance cases, that when the state holds the relevant information, the petitioner cannot be expected to provide evidence, and the state cannot claim it is unable to defend itself. The Inter-American Commission has adopted the UN Human Rights Committee's reasoning that because petitioners and states rarely have equal access to evidence—and states often hold exclusive access—burden of proof cannot rest solely on petitioners. The European Court of Human Rights follows the same logic.

Thus, the principle “*he who asserts must prove*” (affirmanti incumbit probatio) shifts to “*he who knows must prove*” (cognoscenti incumbit probatio).

Roberts identifies three requirements for burden-shifting due to evidentiary imbalance:

1. The applicant must first present plausible allegations sufficient to initiate proceedings.
2. The applicant must be blocked from accessing relevant information.
3. The state must hold, or be in a position to access, the relevant information.

The Rome Statute defines enforced disappearance as arrest, detention, or abduction by the state or political organizations with the intent to remove individuals from legal protection by refusing to acknowledge the deprivation of liberty or to disclose their fate or whereabouts (Art. 7(2)(i)). However, Roberts' third requirement may not apply when perpetrators never produced documents or have already destroyed them.

When such information imbalance exists between the individual victim and the state, the burden of proof shifts to the state. This disparity arises because victims of human-rights violations are under the covert control of state power. Cases include:

- A political detainee dying under unexplained circumstances;
- A prisoner dying without proper medical care after torture;
- A student dying while fleeing surveillance;
- A person dying while trying to escape arrest or encirclement.

If agencies involved in surveillance, pursuit, encirclement, or detention cannot offer persuasive rebuttal, the state must be held responsible. If a victim was taken into custody and never returned or died, and the agency cannot clearly prove release or establish cause of death, forced disappearance is recognized and the state held responsible.

3. When Systematic Human Rights Violations Exist

Examples include mass detention or massacres of opposing groups during war or civil conflict, persecution of activists under authoritarian regimes, suspicious deaths, and disappearances. If victims' families or colleagues can testify to forced summons, arrest, killing, or the handling of bodies, such facts can easily establish state wrongdoing.

Even when specific evidence exists showing that the state engaged in human-rights abuses, state responsibility can still be recognized. For example, if a person was taken by police and subsequently disappeared or was later found dead in an unrelated location.

However, when neither the fact of arrest nor the victim's survival status is clear, burden-of-proof problems arise. If such cases are extremely rare, the burden may fall on the applicant. But if forced abductions occur systematically or on a large scale, and a discernible pattern exists, the method of proof must change.

As seen in German compensation laws for Nazi victims, when the Nazis systematically persecuted targeted groups, individuals could prove persecution indirectly by showing (1) they belonged to the targeted group, and (2) that the group was subject to systematic persecution.

This form of proof relies on analogous cases—i.e., circumstantial, pattern-based evidence. The Inter-American Court uses two elements:

1. The existence of widespread human-rights violations (a general pattern), and
2. A connection between that general pattern and the specific case.

If the applicant proves both, the state must rebut responsibility by proving it did *not* disappear the individual.

Roberts again proposes three conditions for burden-shifting in systematic-violation cases:

1. The applicant must present plausible allegations of the violation suffered.
2. The applicant must provide evidence that a specific systemic pattern of violations exists.
3. The applicant must show that the alleged violation fits within that pattern.

In South Korea—where document destruction and concealment were routine—such indirect, pattern-based methods of proof are essential in cases involving guilt-by-association, blacklists, political suspicious deaths, disappearances, or the persecution of activists.

If the dissenting opinions in the Yeosu–Suncheon case had fully considered that U.S. military government–era courts engaged in de facto summary executions by disregarding due process, they would not have demanded individualized proof of state wrongdoing. Victims’ families had already made plausible allegations in retrial petitions, the Truth and Reconciliation Commission had confirmed widespread summary executions by military courts, and victims had demonstrated that they were subjected to such proceedings.

Only by understanding the patterns of large-scale or systematic human-rights abuses—massacres, suspicious deaths, and disappearances—can legal practitioners escape the trap of case-by-case formalism.

*Professor Lee has written extensively on the issue of fact-finding and burden of evidence. For further reading please refer to e.g. Lee, J. S. (2023). Transnational Justice and Legal Methodologies: Focus on fact-findings and burden of proof. *Democratic Legal Studies*, vol 83, pp. 109-156 (DOI: 10.15756/dls.2023..83.109)

Keynote Speaker

Session Chair

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Obligations of States to prosecute illegal adoptions as crimes against humanity and/or enforced disappearances under international law



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Working paper**

I would like to thank the organizers very much for inviting me to participate in this international conference.

As mentioned, I have been Chair – and I am now Vice-Chair – of the UN Committee on Enforced Disappearances. However, I will speak here in my personal capacity, both as an independent expert and as an international law academic, and my views do not necessarily reflect the position of the Committee nor of the United Nations.

I will speak about three legal issues in relation to illegal adoptions.

The first issue is whether the phenomenon of illegal adoptions can be contemplated and prosecuted through international crimes such as crimes against humanity and enforced disappearances.

The second issue is the extent of the obligation of States to prosecute those crimes under international law.

And finally, the third question relates to possible barriers to prosecution of illegal adoptions, such as the principle of non-retroactivity of criminal legislation and statute of limitations.

I. Illegal adoptions and international crimes

I would like to recall that in September 2022, two UN Treaty bodies, the Committee on Enforced Disappearances and the Committee on the Rights of the Child, and four special procedures (the Special rapporteur on sale and sexual exploitation of children, the Special rapporteur on trafficking in persons, the Special rapporteur on transitional justice, and the Working Group on enforced or involuntary disappearances) have adopted a joint statement on illegal intercountry adoptions. Paragraph 4 of the Statement deals with crimes:

“Illegal intercountry adoptions may violate the prohibition of the abduction, the sale of, or the traffic of children, and, under specific circumstances, may also violate the prohibition of enforced disappearance. In certain conditions as provided for in international law, illegal intercountry adoptions may constitute serious crimes, such as genocide or crimes against humanity.”[1]

Here I will focus on crimes against humanity, enforced disappearances and the specific crimes included in article 25 of the Convention for the Protection of all Persons against Enforced Disappearances (thereafter ICPPED).

A. Crimes against humanity

1. The RuSHA case

It's important to recall that the issue of illegal and even illegal intercountry adoptions was largely dealt with in one of the post-war international criminal cases, that is the so-called "RuSHA[2] case"[3]

The case concerns the policy of "germanization" of populations in occupied territories which were considered by the Nazis to have "good racial characteristics". The plan included the abduction of children and their adoptions in Germany[4], as prosecuted in count 1 against the defendants:

"Count 1 Count one [...] alleges that these "Acts, conduct, plans and enterprises * * * were carried out as part of a systematic program of genocide, aimed at the destruction of foreign nations and ethnic groups, in part by elimination and suppression of national characteristics. The object of this program was to strengthen the German nation and the so-called 'Aryan' race at the expense of such other nations and groups by imposing Nazi and German characteristics upon individuals selected therefrom * * * and by the extermination of 'undesirable' racial elements. This program was carried out in part by

- a) Kidnaping children.
- b) Abortions.
- c) Taking away infants of Eastern workers.
- d) Punishment for sexual intercourse with Germans. [...] [5]

The Judgement quotes, among other evidence, a letter signed by Himmler on 18 June 1941:

"I would consider it right if small children of Polish families who show especially good racial characteristics were apprehended and educated by us in special children's institutions and children's homes which must not be too large. The apprehension of the children would have to be explained with endangered health."

After half a year the genealogical tree and documents of descent of those children who. prove to be acceptable should be procured. After altogether one year it should be considered to give such children as foster children to childless families of good race"[6]

In case of pregnancy caused by sexual intercourse between a member of the SS and non-German woman residing the occupied Easter, abortion had to be carried out, *unless* the woman was evaluated to be "of good stock"[7]. In this case, the child was taken from the mother and sent to Germany and placed in children's home for foreigners or given for adoption to "private families".

Although the prosecutor used the word “genocide” to describe the plan, Control Council Law n°10 of 20 December 1945 did not include that particular crime that had just emerged conceptually (through Lemkin’s work). Those defendants that were found guilty under count one were thus convicted for crimes against humanity and war crimes.

Based on this Second World War experience, the *Convention on the Prevention and Punishment of the Crime of Genocide* was adopted on 9 December 1948 by the General Assembly and entered into force on 12 January 1951[8]. Article II of the Convention includes the act of “forcibly transferring children of the group to another group”, a genocidal act if “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”

2. Crimes against humanity in post WWII

Crimes against humanity were included in the statutes of the *ad hoc* tribunals on former Yugoslavia and Rwanda, which developed a substantial case law and specified the definition of its constitutive elements. It is generally accepted that article 7 of the Rome Statute includes a restatement of the constitutive elements as they crystallized under customary international law:

“For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: [...]”

Article 7, Paragraph 2-a clarifies what is meant by an “attack directed against any civilian population” that is “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

The case law by the ICTY, ICTR, the ICC and hybrid tribunals such as the Special Court for Sierra Leone (SCSL) or the Extraordinary Chambers of Cambodian Tribunals (ECCT) have further clarified the exact meaning of the various notions included in paragraph 1 of article 7.

Article 7, paragraph 1 lists specific crimes that, if committed in the context of an “widespread or systematic attack against any civilian population” are crimes against humanity. Amongst these specific acts, several of them may be applicable to illegal adoptions including intercountry adoptions:

- deportation or forcible transfer of population,
- imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law,
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court,
- enforced disappearance of persons,

- other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

In addition to those, other acts may be applicable if committed against children *in the context* of their illegal adoptions, depending on the circumstances of the case, such as:

- enslavement,
- torture,
- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity,

3. Prosecutions in Argentina

To my knowledge – which might be incomplete – the only cases where illegal adoptions were successfully prosecuted as crimes against humanity took place in Argentina.

In this country, it is worth recalling that the military dictatorship – in coordination with other countries of the region ('plan Condor') led a massive campaign of enforced disappearances from 1976 to 1983. It is considered that about 30.000 persons have been disappeared, imprisoned in clandestine detention centre throughout the country, often subjected to torture and in many cases killed. Amongst the disappeared were pregnant women who were forced to give birth in detention. Their babies were forcibly taken from them and subsequently illegally adopted, with a falsified identity, most of them by families close to the dictatorship. It is estimated that about 400 children were "appropriated". The "grandmothers" the Plaza de Mayo have been searching for those children since then and managed to identify more than 140, but the search continues. Several cases were brought to justice in connection to these disappearances and illegal adoptions.

Among the cases of "systematic plan of minors appropriation",^[9] the case of *Sampallo Barragán case, Rivas and ors (on behalf of Quintana) v Pleé*, concerned the 'appropriation' of the baby of Mirta Mabel Barragán ('Barragán') and Leonardo Rubén Sampallo. Mirta was six months pregnant when she was arrested. Her baby was appropriated by a former army captain who gave her to his friends Osvaldo Rivas and Maria Cristiana Maria Cristina Gómez Pinto with a forged birth certificate. Below are extracts of the summary of the case in *Oxford Reports on International Law*:

"F5 On 4 April 2008 Criminal Federal Trial Court No 4 sentenced (a) Rivas to eight years of imprisonment and eight years of civil disqualification as a co-perpetrator of the forgery of the content of a public document and the abduction and concealment of a minor under 10 years old and as the perpetrator of the forgery of the content of a public document aimed at attesting the identity of persons; (b) Pinto to seven years of imprisonment and seven years of civil disqualification as co-perpetrator of the abduction and concealment of a minor under 10 years old; and (c) Berthier as abettor of the abduction and concealment of a minor under 10 years old. They were acquitted of various other charges.

F6 The defence counsel challenged the convictions before the Court of Cassation, soliciting the application of the statute of limitations. The Public Prosecutor and the private prosecution also filed an appeal challenging the acquittals and, consequently, the sentences finally imposed by the Court of Cassation.

The Court of Cassation handed its judgement on 8 September 2009:

F8 The Chamber IV Judges unanimously decided to uphold the decision rendered by the Criminal Federal Trial Court No 5 as regards its refusal to apply the statute of limitations to the case. The Chamber IV Judges also unanimously held that the crimes amounted to crimes against humanity as analysed by the Criminal Federal Trial Court and partially quashed the conviction and, within the Chamber's procedural power, amended the charges to include the crime of alteration of identity and parental status of a minor under 10 years old in the conviction."

The crimes of eliminating identity and parental status and of forging documents were considered crimes against humanity because they were found by the Court to be "part of the execution of the plan designed to forcibly disappear persons".

4. Prosecution of deportation and forced transfer of children as war crimes before the ICC

Even though the International Court has not addressed the issue of illegal adoption through crimes against humanity, still it is important to note that on 24 June 2024, Preliminary Chamber II of the ICC issued warrants of arrest against Vladimir Putin, President of the Russian Federation, and Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights, "allegedly responsible for the war crime of unlawful deportation of population (children) and that unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute." [10] These charges refer to the alleged forced deportation in Russia or forced transfer (in occupied territories in Ukraine) of Ukrainian children by Russia in various contexts. Some of the children were taken from orphanage and placed in foster care in Russia. Some have allegedly been stolen from their parents or after the death of their parents and some may have been adopted by Russian families. The exact scale of the phenomenon as well as the number of resulting adoptions by Russian families is uncertain, but cases have been documented in particular by the OHCHR. [11] Ukraine has launched a specific project called "brings kids back" alleging that about 19,546 children have reportedly been deported or transferred, while 1819 have been returned. [12]

Even though in this case, the issue is dealt with under the category of war crimes, note must be taken that the crimes of deportation and forced transfer are also listed as crimes against humanity under article 7 of the ICC Statute.

B. Enforced disappearances

Enforced disappearances was defined in several international instruments and is now recognized as a crime under customary international law and a jus cogens norms (see below on these aspects).

The 1994 InterAmerican Convention provides the following definition of enforced disappearance in its article II:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by

persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

Preambular paragraph 6 reaffirms “that the systematic practice of the forced disappearance of persons constitutes a crime against humanity”.

The 2006 UN International Convention for the Protection of All Persons Against Enforced Disappearance (thereafter ICPPED)[13] gives the following definition under article 2:

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Under article 3, the Convention also creates an obligation for states parties to “take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.”

Article 4 provides for an obligation of States parties to “take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.” Generally, this has been interpreted by the Committee as an obligation for States to legislate in order to include in their criminal codes a new “autonomous” crime (that without nexus to another category of crime such as crimes against humanity), reflecting all the elements of the crime listed in article 2. This obligation could also however be satisfied, in my opinion, by the recognition and the application of the crime under customary international law by a court of law – as the it is generally considered now that the definition under article 2 reflects international customary law.

This is also worth noting that States parties have an obligation, under article 7, to “make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness”, and that aggravating circumstances must be established in particular for enforced disappearance of a minor person.

Preambular paragraph 5 of the Convention recalls the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity”, whereas article 5 of the Convention states that:

“The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.”

Enforced disappearance as a crime against humanity is more specifically defined in article 7, paragraph 2-i of the Rome Statute of the International Criminal Court[14] as follows:

“‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

Based on these definition, it appears that many cases of illegal adoption – including intercountry adoption – constitute the crime of enforced disappearance, either as an “autonomous crime” under the Convention or as a crime against humanity, provided that the contextual elements are also met (that is that the enforced disappearance took place in the context and in connection with a widespread or systematic attack against any civilian population, and with knowledge of the attack by the perpetrator)

In the case of *Gelman v. Uruguay* before the InterAmerican Court of Human Rights[15] María Claudia García Iruretagoyena de Gelman was victim of an enforced disappearance in Buenos Aires, during the advanced stages of her pregnancy, from “which it is presumed that she was then transported to Uruguay where she gave birth to her daughter, who was then given to a Uruguayan family.”

Considering the situation of the daughter, María Macarena Gelman García, who subsequently recovered her real identity, the Court said:

“132. In recognition of the foregoing, the abduction and suppression of the identity of María Macarena Gelman García as a consequence of the detention and subsequent transfer of her pregnant mother to another State can be qualified as a particular form of enforced disappearance of persons, for having the same purpose or effect [...]”

Along a similar pattern, Liliana Clelia Fontana Deharbe was abducted on 1st of July 1977 while she was 2 months and half pregnant and she gave birth to her son Pedro Sandoval Fontana during her disappearance. An Argentinian Court convicted Victori Enrique Rei, the adopting father of the stolen son, recognizing that acts of which he was accused constituted enforced disappearance:

“In summary, we consider that the acts for which Víctor Enrique Rei was accused constitute a forced disappearance of persons, since the concealment and retention of Alejandro Adrián, previously taken from his biological mother, could only be maintained through the suppression and subsequent substitution of his civil status through the various ideological falsehoods of public documents, and such concomitant forms of commission cannot be considered, in this specific case, isolated from that original abduction.”[16]

Illegal adoptions, including intercountry adoptions, take place in various circumstances. The application of the definition of enforced disappearances should thus be tested on a case by case basis. At least it is possible to test it against some commonly known patterns of abductions and illegal adoptions of children.

There is no apparent difficulty in applying it to patterns that are near or present a nexus with political repression, mass criminality or war crimes, such as the illegal adoptions that occurred in Argentina, or illegal adoptions carried out as part of attacks against certain parts of the population.

For instance, in the case of *Contreras and others v. El Salvador*, the InterAmerican Court considered the abduction of children in the context of the counterinsurgency strategy developed in El Salvador. The Court concluded that, “under that strategy, it was found useful to abduct children in order to separate them from the “enemy population” and “to educate them under the State’s ideology at that time.” The children were abducted during military operations after family members had been executed or forced to flee to save their lives, and they were frequently appropriated by military leaders, who included them within their immediate families as their children. [...]”.[17]

The Court continued:

“Some former soldiers testified that, starting in 1982, they received orders to take any child found during an attack on enemy positions. In addition to the separation of children from their families as part of a counterinsurgency strategy, there were other reasons, including taking children to give them up for adoption.

According to the evidence received, the possible destinations of the children after they had been separated from their families and disappeared can be broken down as follows:

[...] adoptions through a formal process within the judicial system, with the majority assigned to foreign families, mainly in the United States, France and Italy. [...]”[18]

In *Contreras*, the Court concluded that the abducted and appropriated children were victims of enforced disappearances. In the particular case of Herminia Contreras, “who was located in 2006, her situation must also be categorized as a forced disappearance that ceased when her identity was determined.”[19]

Beyond these cases which are commonly associated with enforced disappearances, this crime may also apply, in my opinion, to patterns that are often associated with common criminality or “trafficking”.

Take, for instance, a very common pattern which is the abduction of newborn babies at the maternity. After birth, the baby is taken away from the mother under the pretext of various checks or care, and the health personnel returns a little later, explaining to the mother that the baby died at birth. In fact, the baby is transferred to an orphanage or a secret location, and then subsequently given or sold to an adoptive family under a false identity with a falsified birth certificate. The operation might be carried out directly by public officials, or by private actors such as adoption agencies or trafficking organisations, but very often with the complicity of State authorities or at least their tacit acquiescence.

In such case, in my opinion, all elements of enforced disappearances are present:

- element 1 : “any form of deprivation of liberty”, which is here the abduction of the newborn
- element 2: “by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State”, that is either the state officials or the private persons acting with the passive or active complicity of state officials;
- element 2-2 (only applicable for enforced disappearances as a crime against humanity): “by, or with the authorization, support or acquiescence of, a State or a political organization” – meaning

that in this case, enforced disappearance also applies to crimes committed by certain non-State actors having a certain degree of organization (such as armed groups or quasi-States).

- element 3: “the refusal to acknowledge the deprivation of liberty or the concealment of the fate or the whereabouts of the disappeared person”: in the case of illegal adoption, this element is constituted by the “official” version provided to the mother (and the rest of the family) that the newborn died, and the subsequent falsification of the newborn’s identity to ensure that he or she is never recovered (concealment).
- element 4-2, “which place such a person outside the protection of the law” – that is the deprivation of access to legal remedies against the abduction and the disappearance, and in relation to the violation of human rights as a consequence, such as the right to identity or the right to family protection. The denial of the legal personality in practice deprives that person of any remedy against the violation he or she has suffered. Similarly, the mother and the family find themselves in a situation of complete legal void and defencelessness.[20]
- element 4bis (only applicable for enforced disappearances as a crime against humanity[21]): “with the intention of removing them from the protection of the law for a prolonged period of time”, a condition which is met by the perpetrator – or the chain of perpetrators – who intends to remove the child, falsify their identity and thus “remove” them as a particular person with an original identity and family history from the protection of the law.

Other patterns could be tested in a similar manner: for instance, a family who entrusts their child to a childcare facility, and one day finds that the child has “disappeared”; a single mother who is pressed to give the child to adoption with the false promise that she will be able to keep contact with her child, and the child is never seen again; a family that is fraudulently persuaded to entrust their child to an association with the promise that the child will be hosted by a foreign family and well educated and will come back after a certain period of time etc.

C. Specific crimes: wrongful removal of children, falsification, concealment or destruction of documents

Article 25 of the ICPPED imposes additional obligations to States parties, including in criminal matters, as stated in paragraph 1 and 2:

“1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.”

The Committee on Enforced Disappearances generally encourage State parties to consider reviewing their criminal legislation to incorporate those specific offenses. These offenses are not *lex specialis* with regard

to enforced disappearances, as it clearly appears from the language of (a): “the wrongful removal of children *who are subjected to enforced disappearances* [...]”

In other words, *enforced disappearance of a child, the wrongful removal of a child and falsification, concealment or destruction of documents attesting to the true identity of the child can come as cumulative convictions in the same case.* Abduction of a child followed by the concealment of their fate or whereabouts, placing that child outside the protection of law is an enforced disappearance. In some cases, the investigation may lead to the conclusion that the enforced disappearance has led to the falsification of identity and wrongful removal through adoption, which then come as additional crimes.

II. The obligation to prosecute illegal adoptions under international law

There is an obligation for States to prosecute illegal adoption under both customary international law and treaties. This obligation results from treaties and from international customary law.

In its General Comment n°31[22], the UN Human Rights Committee, guardian of the International Covenant on Civil and Political Rights[23], underscores the obligation of States, as part of the right to an effective remedy to ensure that persons responsible for serious violations, including enforced disappearances, be brought to justice:

“18. Where the investigations referred to in paragraph 15 reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (see Rome Statute of the International Criminal Court, article 7).”

Specific obligations to investigate and prosecute can be found in other human rights conventions. The Convention against torture includes several provisions relating to the obligation of States parties to establish their jurisdiction over torture (art. 5), including in relation to acts committed outside the territory of the State (“extra-territorial jurisdiction”), conduct a preliminary inquiry, take the suspect into custody (art. 6), and either try or extradite the alleged perpetrator (principle *aut dedere, aut judicare*, art. 7). Similar provisions exist in the ICCPR (art. 9-11). Moreover, article 12, paragraph 1 of ICCPR provides an obligation for States parties to “ensure that any individual who alleges that a person has been subject to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially, and where necessary, undertake without delay a thorough and impartial investigation.” This obligation to undertake an investigation also exists even if there has been no formal complaint “where there are reasonable grounds for believing that a person has

been subjected to enforced disappearance” (art. 12, par. 2 ICPPED). Specific conditions are set out in relation to the “authorities” in charge of the investigation in paragraph 3 of the same article.

The States’ obligation to investigate and prosecute finds its counterpart with the right of “[e]ach victim ... to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.” (art. 24, par 2 ICPPED). The right to truth also results in the obligation of States to “take all appropriate measures to search for, locate and release disappeared person and, in the event of death, to locate, respect and return their remains.” (art. 24, par 3 ICPPED).

The Geneva Conventions require States to investigate war crimes, to prosecute, and try or extradite those responsible (First Geneva Convention, article 49, Second Geneva Convention, Article 50, Third Geneva Convention, article 129, Fourth Geneva Convention, Article 146). This rule is also part of customary international law.[24]

A similar obligation exists in relation to genocide based on the 1948 Convention (articles IV and VI) and customary international law.

As far as crimes against humanity are concerned, the International Law Commission has adopted “draft articles on prevention and punishment of crimes against humanity” in 2019 in order to codify customary international law on the matter.[25] In the preamble, the Commission recognizes that the prohibition of crimes against humanity is a peremptory norm of general international law (*jus cogens*) and that “it is the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity”. Draft articles 7-10 contain similar provisions as those of the Convention against torture and the ICPPED on the obligations of states to investigate, take preliminary measures, try or extradite a suspected perpetrator.

Beyond international instruments, there are multiple cases where international human rights tribunals or committees have reaffirmed the obligation of states to investigate and prosecute serious human rights violations, such as crimes against humanity and enforced disappearances. For instance, in the *Gelman case* (already cited above), the InterAmerican Court underscores the centrality of the right to investigate and its relation to the right to the truth of victims:

“183. This Court has emphasized the importance of the State's duty to investigate and punish human rights violations, obligation to investigate and, where appropriate, prosecute and punish, is particularly important given the seriousness of the crimes committed and the nature of the infringed rights, particularly because the prohibition of enforced disappearance and its corresponding obligation to investigate and punish those responsible has reached *jus cogens* nature.

[...]

185. In regard to enforced disappearance and given that one of its objectives is to prevent the exercise of the appropriate legal remedies and procedural guarantees, if the victim itself cannot access the remedies available, it is fundamental that the next or kin or other people close to the person be able to access prompt and effective proceedings or judicial remedies as means to determine their whereabouts or state of health or to identify the authority that ordered the deprivation of liberty or made it effective.

186. Specifically, any time there is reason to suspect that a person has undergone an enforced disappearance, an investigation shall be initiated. This obligation exists regardless of the filing of a complaint, since in cases of enforced disappearance international law and the general duty to guarantee, impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial, and effective manner. This investigation should be carried out in all available legal mediums and be aimed at obtaining the truth. This is a fundamental and conditioning element for the protection of certain rights affected by these situations, which encompasses in any case, all state authorities, public officials, or individuals who have received news about acts regarding the enforced disappearance of persons, all of whom shall denounce them immediately.

[...]

192. The satisfaction of the collective dimension of the right to truth requires the procedural determination of the most complete historical record possible. This determination must include a description of the patterns of joint action and should identify all those who participated in various ways in the violations and their corresponding responsibilities.”[26]

In *Goiburu and Others*, the Court established that both the prohibition of enforced disappearances and the corresponding obligation to investigate and punish perpetrators has attained the status of *jus cogens* – that is peremptory norm of international.[27]

And in *Contreras and others*, the Court also made clear that the establishment of such institutions as truth commissions did “not fulfil or substitute to the State’s obligation to establish the truth through judicial proceedings”[28]

III. Possible obstacles to the prosecution of illegal adoptions

What are the obstacles that could be invoked against the prosecution of illegal adoptions? In its General Comment n°31, the Human Rights Committee dealt with several of them such as amnesties, pardons and excuses that may relieve the responsible from their responsibilities:

“[W]here public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States Parties concerned may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties (see General Comment 20 (44)) and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable. States parties should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law.”

I will deal her more specifically with two issues which have been invoked in cases of abductions and illegal adoptions: the principle of non-retroactivity of criminal offences and statute of limitations.

None of these may be invoked to prevent the prosecution of perpetrators of illegal adoptions involving the “wrongful removal” and the falsification of the identity of a child. The reason is that – whatever the specific crime used as a legal basis for the prosecution – such an illegal adoption is a continuing act, with two major consequences: a) if a statute of limitation exists, it only starts when the crime ceases, that is when the child – who may have become an adult – recover their true identity, and b) similarly, the law applicable to the illegal adoption is the law applicable when the crime ceases, that is when the person recovers their true identity.

In its *General Comment on enforced disappearances as a continuous crime*, the UN Working Group on Enforced disappearances remarked that “[e]nforced disappearances are prototypical continuous acts. The act begins at the time of the abduction and extends for the whole period of time that the crime is not complete, that is to say until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual. [...] an enforced disappearance is a unique and consolidated act, not of combination of acts. Even if some aspects of the violation may have been completed before the entry into force of the relevant national or international instrument, if other parts of the violation are still continuing, until such time as the victim’s fate or whereabouts are established, the matter should be heard, and should not be fragmented.”[29]

The Working Group went on to deduct the necessary consequences of that continuous nature on criminal matters:

“[I]n criminal law, the Working Group is of the opinion that one consequence of the continuing character of enforced disappearance is that it is possible to convict someone for enforced disappearance on the basis of a legal instrument that was enacted after the enforced disappearance began, notwithstanding the fundamental principle of non-retroactivity. The crime cannot be separated, and the conviction should cover the enforced disappearance as a whole”

Article 8 of the ICPPED sets rules related to statute of limitations for the crime of enforced disappearance taking into consideration its continuous nature:

Without prejudice to article 5 [enforced disappearance as a crime against humanity, which is imprescriptible],

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

(a) Is of long duration and is proportionate to the extreme seriousness of this offence;

(b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

The UN *Joint statement on illegal intercountry adoptions* of 2022 recalls that “States States shall prohibit illegal intercountry adoptions as a continuing offence under criminal law” and “shall ensure that statutes of limitations are not an obstacle for victims seeking access to judicial remedies, given the particular difficulties for child victims to make complaints, and the continuing nature of the offence.”[30]

In the case of *Radilla-Pacheco v. Mexico*[31], the InterAmerican Court opposed the continuous nature of enforced disappearances to the argument of the State party based on the principle of non-retroactivity.

“240. For this Tribunal the State’s argument according to which in this case there was an “unsurpassable obstacle” for the application of the crime of forced disappearance of persons in force in Mexico, based on the fact that the alleged responsible party had gone into retirement prior to the going into force of the criminal definition, is inadmissible. The Court considers that as long as the fate or whereabouts of the victim have not been established, the forced disappearance remains invariable regardless of the changes in the nature of “public official” of the author. In cases such as the present, in which the victim has been missing for 35 years, it is reasonable to assume that the characteristic required by the active subject can vary in time. In that sense, if the State’s argument were to be accepted, impunity would be favored.

241. Taking into account the aforementioned, this Court considers that pursuant with the principle of *nullum crimen nulla poena sine lege praevia*, the figure of forced disappearance constitutes the legal classification applicable to the facts of the present case.”

The InterAmerican Court cited several precedents of supreme or constitutional courts of the continent in support of its position, in particular the case of *Villegas Namuche* before the Constitutional Court of Peru, where this Court held the following in relation to the principle of legality:

“Finally, although the crime of enforced disappearance was not in force in our Penal Code when the alleged detention of Genaro Villegas Namuche occurred, this does not constitute an impediment to carrying out the corresponding criminal process and sanctioning those responsible for the other crimes involved in the events.

In any case, although the principle of criminal legality, recognized in article 2.24,d of the Constitution, includes among its guarantees that of the *Lex previa* , according to which the prohibitive norm must be prior to the criminal act, in the case of crimes of a permanent nature, the applicable criminal law will not necessarily be the one that was in force when the crime was committed.

The principle of prior law guarantees that, at the time the crime is committed, a penal law establishing a specific penalty must be in force. Thus, in the case of instantaneous crimes, the applicable penal law will always be prior to the criminal act. In contrast, in continuing crimes, new penal laws may arise, which will be applicable to those who commit the crime at that time, without this implying retroactive application of the penal law.

Such is the case of the crime of enforced disappearance, which, according to Article III of the Inter-American Convention on Forced Disappearance of Persons, must be considered as a continuing crime until the fate or whereabouts of the victim are established.”[32]

More specifically in the Argentinian case of “systematic plan of baby kidnapping I”[33], the Court in first instance found that

“the law applicable to each case must be determined based on the law in force on the date the commission of the crime ceased, which has been specifically established as the date on which the results of the expert study were made public in court, in cases where this has occurred. And for cases where the cessation has not occurred, the applicable law is the date of the judgment that proves the abduction, retention, and/or concealment of a child under 10 years of age.”

In the case of *Juan Manuel Contreras Sepúlveda*, the Supreme Court of Chile confirmed the decision of the Court of Appeal not to apply the Amnesty law to an abduction that occurred on 7 January 1975, although the Amnesty Law covered almost all crimes committed between 1973 and 1978. The conviction was based on the crime of “kidnapping” provided for in Article 141 of the Criminal Code and the Court recognized the continuous character of the crime, which could be assumed to have extended beyond the time limit established by the Amnesty Law[34].

The European Court of Human Rights – although not on a case of enforced disappearance – adopted a similar position, when it considered not contrary to article 7, paragraph 1 of the European Convention of Human Rights the conviction of the applicant for the offence of “abusing a person living under the same roof” introduced into the Criminal Code in 2004, in relation to a conduct that continued between 2000 and 2006.[35]

In relation to statute of limitation, the French Court of Cassation, in the case of the request for extradition by Argentina of Mario Sandoval[36], ruled that it was not applicable to an “arbitrary detention or confinement” that started in 1976 but that continued after the end of the military dictatorship in 1983: “in this situation the limitation period for the false imprisonment of which he was a victim has not begun to run, as the offence has not ended”.

In conclusion, neither the principle of non-retroactivity nor statute of limitation can legally prevent prosecutions of abductions followed by illegal adoptions, since these are continuous acts until the true identity of the child has been officially reestablished. Prosecution can be based on the crime of enforced disappearance if present in the criminal code, even *ex post facto* – that is in relation to acts that started before the adoption of the law that incorporated enforced disappearances in the code. Prosecutions can also be based on other relevant crimes such as arbitrary detention, kidnaping, concealment, falsification of documents etc., which should then be understood in these cases not as instantaneous crimes but as continuous crimes. Moreover, if a prescription is associated to those crimes, it only starts to run when the crime ceases, that is when the identity of the child is recovered.

In addition to this, it is also important to mention that the principle of non-retroactivity and statute of limitation are also neutralized if abduction of children and illegal adoptions are prosecuted as a crime against humanity, that is when these acts have taken place in connection with a widespread or systematic attack against a civilian population, with the knowledge by the perpetrator of this attack. This is because it is generally admitted that a) genocide, crimes against humanity and war crimes can be prosecuted on the

basis of an *ex post facto* law because they were already recognized as crimes under international law at least since the 1950s, and b) such serious crimes in international law are imprescriptible.

In relation to crimes committed during the Second World War, the French Court of Cassation in the *case of Klaus Barbie*, ruled that the law of 26 December 1964 only “confirmed” crimes against humanity and the principle of their imprescriptibility, which had already been established before in international law.

More generally, the European Court of Human Rights established that the principle of non-retroactivity contained in article 7, paragraph 1 of the European Convention does not prevent the conviction of a perpetrator based on a law criminalizing serious crimes under general international law adopted after the act were committed. In the case of *Boban Šimšić v. Bosnia and Herzegovina*[37], the Court said that

“[i]ts function under Article 7 § 1 is to consider whether the applicant’s acts, at the time when they were committed, constituted an offence defined with sufficient accessibility and foreseeability by domestic or international law”

In the case, the Court found that the applicant was convicted in 2007 of persecution as a crime against humanity about acts which had taken place in 1992. It however found no violation of article 7, paragraph 1 of the Convention:

“While the impugned acts had not constituted a crime against humanity under domestic law until the entry into force of the 2003 Criminal Code, it is evident from the documents cited in paragraph 8-13 above that the impugned acts constituted, at the time when they were committed, a crime against humanity under international law.”

Regarding statute of limitations, serious crimes such as genocide and crimes against humanity are generally recognized as imprescriptible. This is a rule of customary international law reflected in various statutes and treaties, including article 29 of the Rome Statute of the International Criminal Court.[38] As the International Law Commission observed in the commentary to draft article 6 of its draft articles on crimes against humanity:

“At present, there appears to be no State with a law on crimes against humanity that also bars prosecution after a period of time has elapsed. Rather, numerous States have specifically legislated against any such limitation.”[39]

* This document is a working paper which is still work in progress and subject to further change. In addition, please note that the Korean version of this paper was translated from English with the assistance of AI, and minor inaccuracies may be present.

** The views expressed in this paper are personal and do not necessarily reflect the position of the Committee on Enforced Disappearances nor of the United Nations.

[1] Footnotes omitted. *Joint statement on illegal intercountry adoption*, CED/C/9, 5 December 2022.

[2] That is the “SS Race and Resettlement Office”.

[3] *United States v. Ulrich Greifelt, et al*, “RuSHA case” before the US Military Tribunal in Nuremberg under Control Council Law n°10, TWC, vol. V.

- [4] https://en.wikipedia.org/wiki/Kidnapping_of_children_by_Nazi_Germany
- [5] “RuSHA case”, p. 89.
- [6] “RuSHA case”, p. 103.
- [7] *Id.*, p. 109.
- [8] The Republic of Korea acceded to the Genocide Convention on 14 October 1950.
- [9] For a complete overview see the Document “Dossier de sentencias pronunciadas en juicios de Lesa Humanidad en Argentina”, updated in 2024,
https://www.mpf.gob.ar/lesa/files/2025/03/LH_Dossier_actualizacion-diciembre_2024-2.pdf
- [10] <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimir-ovich-putin-and>
- [11] See OHCHR report, *The impact of the armed conflict and occupation on children’s rights in Ukraine*, 24 February 2022-31 December 2024, , §§ 74-85.
- [12] <https://www.bringkidsback.org.ua/>
- [13] The Republic of Korea acceded to the Convention On 4 January 2023.
- [14] The Republic of Korea ratified the Rome Statute on 13 November 2002.
- [15] IACtHR, *Case Gelman v. Uruguay*, judgement of February 24, 2011 (Merits and Reparations).
- [16] Sentencia condenatoria por crímenes contra la humanidad en contra el Comandante de Gendarmería Victor Enrique Rei por sustracción de menores, 30 April 2009, Google translation from Spanish to English.
- [17] IACtHR, *Case of Contreras and others v. El Salvador*, judgement of August 31, 2011 (Merits, Reparations, and Costs), par. 53.
- [18] *Id.*, par. 54. In connection with El Salvador, see also IACtHR, *Case of the Serrano-Cruz Sisters v. El Salvador*, judgement of March 1, 2005 (Merits, Reparations and Costs) and *Case of Rochac Hernandez and others v. Salvador*, judgement of October 2014 (Merits, Reparations and Costs). About similar practices in Guatemala, IACtHR, *Case of the “Las Dos Erres” Massacre v. Guatemala*, judgement of November 24, 2009 (Preliminary objection, Merits, Reparations and Costs).
- [19] IACtHR, *Case of Contreras and others v. El Salvador*, judgement of August 31, 2011 (Merits, Reparations, and Costs), par. 92.
- [20] See IACtHR, *Case of Contreras and others v. El Salvador*, judgement of August 31, 2011 (Merits, Reparations, and Costs), par. 88-89: “88. Thus forced disappearance also leads to a violation of the right to recognition of juridical personality established in Article 3 of the American Convention given that forced disappearance seeks not only one of the most serious ways of removing a person from the whole sphere of the legal system, but also denies his existence and leaves him in a sort of limbo or situation of juridical uncertainty before society and the State, especially when his identity has been altered illegally. 89. It has been proved that many of the disappeared children were registered under false information or had their personal data altered, as in the case of Gregoria Herminia. The effects of this are twofold: on the one hand, for the children who were appropriated, it makes it impossible to find their family and to learn their biological identity and, on the other, for the family of origin, who are prevented from exercising the legal remedies to re- establish the biological identity and the family ties and end the deprivation of liberty. [...] That violation only ceases when the truth about the identity is revealed in some way and the victims are guaranteed the legal and real possibility of recovering their true identity and, where appropriate, the family ties, with the pertinent legal consequences.”

- [21] Note however that this intentional element and its temporary component is not part of the definition of enforced disappearances under international customary law : see African Extraordinary Chambers, *Ministère public v. Hissène Habré*, judgement, 30 May 2016, par. 1471; Kosovo Specialist Chambers, *Public redacted version of Decision on the Confirmation of the Indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, KSC-BC-2020-06, par. 77: “[U]nder customary international law as applicable at the relevant time, there is no need to demonstrate or even presume the special intention of the perpetrators to remove the victim from the protection of the law.”
- [22] General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant CCPR/C/21/Rev.1/Add. 13 26 May 2004 Adopted on 29 March 2004 (2187th meeting).
- [23] The Republic of Korea acceded to the ICCPR on 10 April 1990.
- [24] See Rule 158 of Customary IHL identified in the 2005 ICRC study.
- [25] See the ICL report, A/74/10, Chapter IV, p. 10.
- [26] IACtHR, *Case Gelman v. Uruguay*, judgement of February 24, 2011 (Merits and Reparations). Footnotes omitted.
- [27] IACtHR, *Case of Goiburú and others v. Paraguay*, judgement of September 22, 2006, par. 84.
- [28] IACtHR, *Case of Contreras and others v. El Salvador*, judgement of August 31, 2011 (Merits, Reparations, and Costs), par. 135.
- [29] UN Working Group on Enforced or Involuntary Disappearances, *General comment on enforced disappearances as a continuous crime*, UN doc. A/HRC/16/48, par. 39.
- [30] UN Joint statement, CED/C/, par. 12.
- [31] IACtHR, *Case of Radilla-Pacheco v. Mexico*, Judgement of November 23, 2009 (Preliminary Objections, Merits, Reparations, and Costs), par. 240-241.
- [32] The case can be found here : <https://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html> Google translation from Spanish to English. See also a presentation of the case in the Oxford reports: ILDC 332 (PE 2004), 18 March 2004.
- [33] Índice de la Sentencia recaída en el marco de las causas N° 1351, 1499, 1584, 1604, 1730 y 1772 del Registro del Tribunal Oral en lo Criminal Federal N° 6.
- [34] *Sepúlveda (Juan Manuel Contreras), Re and ors, Action to annul*, Rol No 517-2004, ILDC 394 (CL 2004), 17th December 2004, Chile; Supreme Court.
- [35] ECtHR, Grand Chamber, case of Rohlena v. the Czech Republic *Application no. 59552/08*, judgement of 27 January 2015, par. 63-70.
- [36] Cour de Cassation, chambre criminelle, 24 mai 2018, 17-86.340, Bull. See also the decision by the Constitutional Council in the same case n°2019-785 QPC, 24 May 2009 recognizing the constitutionality of the suspension of statute of limitation for continuous crimes.
- [37] ECtHR, Application n°51552/10, Decision of 10 April 2012. See also, on command responsibility, ECtHR, *Case of Milanković v. Croatia (Application no. 33351/20)*, judgement of 20 January 2022.
- [38] See the International Law Commission Draft articles on prevention and punishment of crimes against humanity, article 6, and its commentary: A/74/10, pp. 77-78.
- [39] *Id.*, p. 78.

Discussants

Session Chair Sang Su HUH, Commissioner, Truth and Reconciliation Commission

1. Wan Ik JANG, Lawyer, Haemaru Law Firm
2. Ministry of Health and Welfare
3. Police
4. Ministry of Justice

Discussion Paper



Wan Ik JANG, Lawyer - Haemaru Law Firm

1. “Fact-finding and the burden of proof” is an issue commonly faced by all truth and investigation commissions, including the Truth and Reconciliation Commission (hereinafter “the Commission”).
2. For this reason, when commissions begin their investigative work, they establish their own standards. Most commissions must make determinations based on the materials they are able to collect and the statements they are able to obtain. In doing so, the standards set by each commission play a decisive role, and decisions rendered according to these standards are, in most cases, upheld by the courts.
3. However, when a commission sets its standards while trying to anticipate how a court might judge a case, there is a tendency for the commission to follow the strict burden of proof required by the courts.
4. Indeed, there have been cases in which the truth-finding decisions of the First Commission were rejected by the courts, resulting in the dismissal of the claims.
5. I would like to introduce an example where the burden of proof was shifted due to a statutory presumption.
6. Article 2(2) of the Special Act on the Inspection of Collaborators for the Japanese Occupation defines “property of pro-Japanese collaborators” as property acquired or inherited by a pro-Japanese collaborator in return for cooperating with Japanese imperialism from the outbreak of the Russo-Japanese War until August 15, 1945, or property bequeathed or donated with knowledge that it was pro-Japanese property. It further provides that property acquired by a pro-Japanese collaborator during this period is presumed to have been obtained in return for pro-Japanese collaboration.
7. In a constitutional complaint related to this provision, the Constitutional Court upheld the law, stating: “It is extremely difficult for the state to prove, one by one, whether particular property was acquired as a reward for pro-Japanese collaboration. On the other hand, the acquirers of the property or their descendants generally are more likely to possess documentation or have knowledge about the circumstances under which the property was acquired. Therefore, requiring the property acquirer to prove the circumstances of acquisition cannot be considered unduly unfair.” (Constitutional Court Decision, 31 March 2011, 2008Hun-Ba141; 2009Hun-Ba14, 19, 36, 247, 352; 2010Hun-Ba91 (consolidated))

8. During the amendment of the Framework Act on Clearing Up Past Incidents for Truth and Reconciliation, it may be worth considering the inclusion of a similar presumption clause. As the Enforcement Decree would also need amendment, it would be advisable to introduce a provision requiring the Commission to render decisions on truth-finding in accordance with standards established by the Commission itself.

9. Therefore, if a Third Commission is launched, one of its first tasks should be to examine how the First and Second Commissions established their truth-finding criteria, identify the resulting problems, and work to establish improved criteria for the Third Commission. These standards should then be reflected in the relevant laws and also incorporated into the Commission's investigative rules.

10. In this process, it would be beneficial to review how other investigative commissions have set and applied their decision-making standards, as well as to examine how such standards have influenced court judgments.

11. In matters relating to overseas adoption, the Personal Information Protection Act has emerged as a major obstacle preventing adoptees from uncovering the truth about their origins.

12. The best solution would be to amend the Personal Information Protection Act to create a special provision for overseas adoptees, thereby guaranteeing their rights in full. Alternatively, the Framework Act on Clearing Up Past Incidents for Truth and Reconciliation could include an exemption from the Personal Information Protection Act, allowing adoptees complete access to their personal information.

13. There must be no barriers to the Commission's investigations.

Ministry of Health and Welfare

Police

Q&A

Sang Su HUH, Commissioner, Truth and Reconciliation Commission

Closing

Closing Remarks



Boon Young HAN, Co-representative of DKRG

Distinguished guests, colleagues, and friends,

As we come to the close of today's important conference, I want to begin by expressing our deepest gratitude to all who have shared their knowledge, expertise, and, most importantly, their personal experiences.

To the brave individuals who courageously shared their testimonies, your voices remind us of the human impact behind the legal frameworks and international obligations we discuss. Your courage fuels the work we must continue.

We are grateful to our speakers and discussants — from experts in law and human rights, to representatives of the Truth and Reconciliation Commission, to our colleagues in government and civil society. Today's discussions have made clear that the state's involvement in forced international adoptions constituted serious violations of fundamental human rights, including the right to family, identity, and protection from coercion.

The findings of the TRC, reinforced by international principles under the Rome Statute, the CRC, and the IPU resolution, underscore that these actions cannot be forgotten and cannot be left unaddressed. Justice, accountability, and restoration are not optional — they are legal and moral obligations.

As we leave this room, let us carry forward a shared commitment: to ensure redress and recognition for the victims, to restore identities and rights, and to prevent any repetition of these grave abuses. Our work is not only to remember, but to act — through advocacy, legal reform, and continued international cooperation.

I hope that today's conference has strengthened our resolve and our network, and I invite all of us to continue this work with courage, clarity, and compassion. Together, we can transform acknowledgment into justice, and accountability into meaningful change.

Thank you

Conférence internationale
sur la vérité de l'adoption

Conférence internationale sur la vérité de l'adoption : Crime contre l'Humanité, disparitions et adoptions forcées

Le matériel de la conférence est en trois langues, le coréen, l'anglais et le français
본 자료집은 한글본과 영문본으로 구성되어있습니다

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Conférence internationale sur la vérité de l'adoption

Crimes contre l'Humanité, disparitions et adoptions forcées

- Quand : 26 nov. 2025, 14:00-17:30
- Hôtes - KoRoot, DKRG, Solidarité pour le Droits des Enfants

Lieu : Bâtiment des membres de l'Assemblée nationale, Salle de conférence 2

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	Mot d'ouverture - Peter MØLLER (Co-représentant KoRoot)
	Mot de bienvenue - Do Hyun KIM (Co-représentant KoRoot), Min Ho CHO (Co-représentant Solidarité pour le Droits des Enfants)
	Message de félicitations - Représentante.s : In Sun NAM, Sang Sik LEE, Hae In YOUNG, Young Seok SEO
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	<i>24 années volées par le Centre d'aide sociale Hope</i> Bong So CHEON
	<i>D'avoir été déclarée 'morte à la naissance' à être adoptée à l'étranger : Ma quête de vérité</i> Marie Louise WANG (vidéo)
	<i>L'adoption comme une disparition forcée : témoignage d'une coréenne adoptée en France</i> Aurélien TOUVÉ (vidéo)
	<i>J'ai perdu mon enfant sans même comprendre le sens d'adoption</i> Yong Keum SONG
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	<i>Justice transitionnelle et méthodologies juridiques : focus sur l'établissement des faits et la charge de la preuve</i> Jae Sung LEE (Professeur, Université Konkuk, Faculté de droit)
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	<i>Les obligations des États de poursuivre en justice les adoptions forcées comme crimes contre l'Humanité et/ou de disparitions forcées sous la loi internationale</i> Olivier de FROUVILLE (Professeur de droits publics à l'université Paris-Panthéon-Assas, Directeur du Centre des droits humains et ancien président, Comité des Nations Unies contre les disparitions forcées)
Participant.e.s	
16:15-17:00	Président de séance - Sang Su HUH (Ancien commissaire, Commission vérité et réconciliation de Corée du Sud)
	1. Wan Ik JANG (Avocat, Cabinet d'avocat.e.s Haemaru) 2. Ministère de la Santé et des Affaires sociales

	3. Police
Q&R	
17:00-17:30	Président de séance - Sang Su HUH ancien commissaire, Commission vérité et réconciliation de Corée du Sud)
Clôture	
17:30-17:40	Mot de clôture - Boon Young HAN (Co-représentante DKRG)

Introduction et bienvenue

Mot d'ouverture



Peter MØLLER, Co-représentant de KoRoot, Co-représentant de DKRG

Le 26 mars 2025, la Commission Vérité et Réconciliation (CVR) a publié ses premières conclusions concernant les adoptions en provenance de Corée du Sud. Le système d'adoption a été qualifié d'inconstitutionnel et d'impliquant des violations massives des droits humains.

Le rapport de la CVR décrit la falsification systématique de l'identité et des antécédents des personnes adoptées ; l'absence de consentement valable des parents biologiques ; de faux témoignages de pauvreté ; et des informations inventées sur les personnes adoptées et leurs familles biologiques.

La CVR a également détaillé comment les foyers et institutions pour enfants, en collaboration avec des agences d'adoption coréennes agréées par l'État telles que Holt et KSS, ont fonctionné comme des filières d'approvisionnement impitoyables et des fournisseurs internationaux d'enfants afin de satisfaire une demande croissante d'enfants coréens de la part de couples sans enfants.

L'industrie de l'adoption coréenne et internationale connaît la vérité, mais elle a habilement, pendant des décennies, répandu l'idée que l'adoption est la volonté de Dieu et que l'enfant, grâce à ce processus, renaît au nom de Dieu à une vie nouvelle et chrétienne.

En Europe, cette même industrie a, pendant des décennies, persuadé le monde que des enfants pauvres attendent patiemment d'être sauvés par des couples riches et bien intentionnés sans enfants. L'adoption y est présentée comme la fondation d'une famille, et, à travers ces discours mensongers, le droit des couples sans enfants à fonder une famille en adoptant un enfant étranger est devenu une atteinte au droit d'une autre famille et d'un autre enfant à une famille.

Depuis ses débuts en Corée, l'adoption a été considérée comme une question de santé et de protection de l'enfance. Dans les pays d'accueil, elle a été traitée comme une question de droit successoral. Elle n'a jamais été abordée sous l'angle des droits civils ou humains fondamentaux. À plusieurs reprises, des personnalités politiques coréennes et des médias internationaux ont exprimé leurs inquiétudes quant à la légalité et à l'éthique de ces adoptions internationales, mais leurs voix ont été étouffées.

Lors de notre conférence « La vérité sur l'adoption », les 10 et 11 septembre, consacrée au rapport de la Commission Vérité et Réconciliation (CVR), la conclusion était sans équivoque : l'adoption n'est pas une question de santé et de protection de l'enfance, mais bien un crime.

Vol d'enfants, enlèvements, usurpation d'identité, falsification de documents, vente d'enfants à des fins lucratives, enfants déclarés morts à tort à leur famille biologique, enfants trompés ou séparés de force de leur famille, coercition, extorsion et corruption.

Mot de bienvenue



Do-hyun KIM, Co-représentant de KoRoot

Je tiens à remercier toutes les personnes présentes aujourd'hui à la « Conférence Internationale sur la Vérité en matière d'Adoption : Crimes contre l'humanité – Disparitions forcées et adoptions forcées ». J'adresse également mes remerciements et la bienvenue à celles et ceux qui nous rejoignent en ligne.

Le 26 mars dernier, la Commission Vérité et Réconciliation (2^e mandat) a conclu, à travers son enquête sur les systèmes et les pratiques ayant encadré l'adoption internationale, que l'État avait violé les droits humains des personnes adoptées, droits pourtant garantis par la Constitution et par les conventions internationales. En envoyant à l'étranger un très grand nombre d'enfants tout en négligeant son devoir de protéger les droits fondamentaux des citoyennes et citoyens — par un cadre législatif insuffisant, une supervision inadéquate et le non-respect des procédures administratives — l'État a failli à ses responsabilités. La Commission a donc recommandé que l'État présente des excuses officielles.

Le 1er octobre dernier, le président Lee Jae-Myung a répondu à cette recommandation en exprimant des excuses respectueuses et en manifestant sa compassion pour les souffrances endurées par les personnes adoptées à l'étranger.

Depuis 70 ans, la Corée du Sud a poursuivi l'adoption internationale. Cela signifie aussi que, pendant une très longue période, les droits de l'enfant ont été systématiquement violés. L'une des raisons pour lesquelles cette situation a pu perdurer est que l'adoption internationale a longtemps été perçue par les pays d'origine comme par les pays d'accueil comme une « image éclatante et positive (The Glowing Image) ». Cette image a contribué à décriminaliser ou à justifier divers problèmes et crimes survenus au cours des processus d'adoption internationale.

Par exemple, la fabrication de faux registres familiaux pour créer de « faux orphelins » constituait un acte manifestement illégal impliquant la collusion des agences d'adoption, des administrations locales et des tribunaux de famille. Pourtant, en raison de l'image positive de l'adoption internationale, ces pratiques n'ont pas été reconnues comme des problèmes sociaux. Aucun crime ne peut être justifié, quelles que soient les circonstances, mais cette structure s'est maintenue pendant des décennies.

Les disparitions forcées peuvent être comprises dans la même logique. Dans le cadre de l'adoption internationale, des enlèvements d'enfants et la falsification répétée de leur identité ont eu lieu. Il s'agit là de crimes évidents commis contre des enfants. Cependant, combinés à l'image positive de l'adoption internationale, ces crimes ont souvent été ignorés ou considérés comme non coupables.

La conférence d'aujourd'hui, « Conférence Internationale sur la Vérité en matière d'Adoption : Crimes contre l'humanité – Disparitions forcées et adoptions forcées », vise à examiner le pouvoir symbolique que l'adoption internationale a construit au cours des 70 dernières années et la structure de décriminalisation qui en a découlé. À travers cette discussion, nous cherchons à établir clairement la vérité concernant les violences et les préjudices subis par les enfants et leurs familles biologiques, et à explorer les voies d'une justice réparatrice véritablement adaptée aux victimes et aux familles.

Enfin, je souhaite exprimer ma gratitude au DKRG, à l'Alliance pour les Droits de l'Enfant, ainsi qu'à la députée Nam In-soon et aux autres membres de l'Assemblée nationale qui co-organisent cette conférence. Plus particulièrement, je remercie chaleureusement le Dr Olivier de Frouville, qui prononcera le discours d'ouverture (Keynote speech), ainsi que les témoins — Jeon Bong-su, Song Yong-geum, Aurélie Tuvé, Marie Louise Wang — qui partageront leurs histoires avec nous. Je remercie également l'ancien juge de la Cour constitutionnelle Lee Seok-tae, le commissaire Heo Sang-su, la Dr Lee Hyeong-suk, le professeur Lee Jae-seung, l'avocat Jang Wan-ik, ainsi que toutes les personnes qui participeront aux discussions.

Je renouvelle mes remerciements les plus sincères à vous toutes et tous pour votre présence aujourd'hui.

Merci.

Mot de félicitations



In Sun NAM

Bonjour. Je suis Nam In-soon, députée à l'Assemblée nationale de la République de Corée, représentant la circonscription de Songpa-gu B pour le Parti démocrate de Corée, et membre de la Commission de la santé et du bien-être social. C'est un grand honneur de co-organiser aujourd'hui à l'Assemblée nationale la Conférence internationale sur la vérité concernant l'adoption : Crime contre l'humanité – Disparition forcée et adoption forcée. J'adresse mes sincères remerciements à mes collègues co-organisateurs — Lee Sang-sik, Seo Young-seok et Yong Hye-in — ainsi qu'à Root Home, au Denmark Korean Rights Group (DKRG), à l'Alliance pour les droits de l'enfant, et à toutes les organisations et personnes engagées en Corée et à l'étranger.

En mars dernier, après deux ans et sept mois d'enquête, la Commission vérité et réconciliation a reconnu diverses violations des droits humains commises dans le cadre des adoptions internationales, et a recommandé une excuse officielle de la part de l'État. Des cas terribles ont été confirmés, dans lesquels des enfants ont été adoptés à l'étranger de manière forcée après avoir été faussement enregistrés comme orphelins alors que leurs parents biologiques étaient vivants. Cette décision constitue la première reconnaissance formelle de la responsabilité de l'État dans les violations des droits humains liées aux adoptions internationales passées.

Bien que cette décision représente une avancée majeure, seules 56 des 367 personnes ayant demandé la reconnaissance ont vu la responsabilité de l'État confirmée, et de nombreux dossiers ont été rejetés pour *insuffisance de documents*. Compte tenu du fait que les adoptions internationales de l'époque reposaient précisément sur des falsifications d'identité et des documents contrefaits, l'absence d'archives ne peut en aucun cas servir de motif pour refuser la reconnaissance des victimes.

Il est particulièrement essentiel de définir correctement la question de l'adoption internationale dans le cadre conceptuel original de la disparition forcée, ce qui constitue le point de départ indispensable pour l'établissement de la vérité. Cette approche a également été confirmée au cours de l'enquête, et un examen approfondi des problèmes structurels — séparation forcée, falsification de documents, adoption sans consentement — s'impose de manière urgente.

En août dernier, j'ai déposé un projet de loi visant à modifier la Loi-cadre sur l'établissement de la vérité et la réconciliation, afin d'élargir le champ des enquêtes aux violations des droits humains commises dans les agences d'adoption, et non plus seulement dans les établissements sociaux et institutions de placement collectif gérés par le secteur privé. Je m'engage à en assurer l'adoption rapide.

Depuis le 19 juillet, toutes les procédures d'adoption ont été transférées d'un système centré sur les agences privées à un système public géré directement par l'État et les collectivités locales. Cependant, de nombreux défis restent à relever, notamment le soutien aux tests ADN pour la recherche des familles biologiques, la création d'un système national d'échange d'informations, et l'élargissement du droit d'accès aux dossiers pour les personnes adoptées.

L'État ne doit pas se soustraire à ses responsabilités et doit mettre en place des mesures concrètes et efficaces afin de contribuer à guérir les blessures de toute une vie. Après les excuses officielles, il est indispensable d'améliorer le système d'accès à l'information sur l'adoption, de garantir le droit aux origines, et de mettre en œuvre des mesures de réparation, notamment en cas de falsification d'identité. En tant que membre de la Commission de la santé et du bien-être social, je veillerai attentivement à ce que ces engagements soient pleinement réalisés.

Je remercie une nouvelle fois toutes les personnes présentes aujourd'hui et je vous souhaite santé, bonheur et paix. Je vous remercie.

Mot de félicitations



Sang Sik LEE

Bonjour à toutes et à tous.

Je suis Sang-sik Lee, membre de l'Assemblée nationale.

Je tiens à exprimer ma profonde gratitude à chacune et chacun d'entre vous pour votre présence à la conférence internationale *Adoption Truth: Crimes Against Humanity, Enforced Disappearance and Forced Adoptions*.

J'adresse tout particulièrement mes remerciements aux représentants de KoRoot et du Danish Korean Rights Group (DKRG), qui ont organisé cet événement, ainsi qu'aux députés In Sun Nam, Hae In Young et Young Seok Seo, co-organisateurs de cette rencontre, et à l'ensemble des organisations participantes.

La raison pour laquelle nous sommes réunis aujourd'hui est de faire face aux vérités longtemps ignorées et dissimulées dans le processus d'adoption internationale, ainsi qu'aux graves violations des droits humains qui y ont été commises, et de rechercher des solutions pour y remédier.

On estime qu'entre 1955 et 1999, environ 141 700 enfants ont été envoyés à l'étranger pour y être adoptés. Durant cette période, les organismes d'adoption intervenaient à toutes les étapes — de la « sélection » des enfants jusqu'à leur départ — entraînant des dérives majeures telles que l'industrialisation de l'adoption internationale et la marchandisation des enfants.

Le 25 mars 2025, la Commission Vérité et Réconciliation (TRC) a officiellement conclu que l'adoption internationale était le résultat structurel de l'exercice injuste et continu du pouvoir public par l'État coréen. Cette décision constitue à la fois un signal d'alarme et une condamnation ferme du gouvernement coréen et de la société civile, qui ont longtemps considéré l'adoption internationale comme une forme de « bienfaisance » pour les enfants.

Cependant, parmi les 367 requêtes soumises à la TRC, seules 56 ont abouti à la reconnaissance de la responsabilité de l'État, tandis que les 311 autres ont été rejetées ou suspendues. Étant donné que l'adoption internationale reposait structurellement sur la manipulation d'identité et la falsification de documents, il est injuste de rejeter les demandes des victimes pour « manque de documents ». De telles décisions portent atteinte au droit des personnes adoptées à l'étranger à l'identité — à connaître leurs informations de naissance et à retrouver leurs origines.

J'espère que les discussions d'aujourd'hui constitueront une étape significative pour corriger les violations des droits humains commises dans le système d'adoption internationale, et qu'elles serviront de

base à la poursuite ininterrompue, par les personnes adoptées, de la reconnaissance de leurs droits.
Je m'engage, moi aussi, à faire tout ce qui est en mon pouvoir au sein de l'Assemblée nationale pour faire avancer ce travail.

Je vous remercie.

Mot de félicitations



Hae In YOUNG

Bonjour,

Je suis Yong Hye-in, députée à l'Assemblée nationale et présidente du Parti du Revenu de Base.

La République de Corée est un État partie à la Convention des Nations Unies pour la protection de toutes les personnes contre les disparitions forcées. Pourtant, les efforts déployés par le gouvernement coréen pour établir la vérité sur les crimes de disparitions forcées et d'adoptions illégales à l'étranger, perpétrés depuis les années 1970, restent dramatiquement insuffisants. La deuxième Commission Vérité et Réconciliation n'a approuvé que 98 des 367 demandes déposées concernant les adoptions illicites à l'étranger, et parmi celles-ci, 42 ont été placées « en suspens ». Malgré les témoignages cohérents des victimes, l'État a renoncé à leur offrir réparation au motif de l'absence de documents formels.

En raison de la nature même des disparitions forcées, il est fortement à craindre que les documents aient été falsifiés ou détruits, et dans de nombreux cas, qu'aucun document n'ait été établi dès le départ. L'État ne doit pas détourner le regard de ces crimes contre l'humanité sous prétexte d'un manque de pièces administratives, ni se soustraire à sa responsabilité dans des violences d'État.

Dans de nombreux arrêts rendus par les juridictions internationales des droits humains, lorsqu'il existe un écart important dans l'accès à l'information entre victimes et auteurs, et que l'existence de violations systématiques est déjà établie, la charge de la preuve incombe à l'État et non à la victime. En Allemagne, la Loi fédérale d'indemnisation des victimes du nazisme reconnaît les faits de persécution dès lors qu'est démontré le caractère systématique de la politique de persécution à l'encontre d'un groupe donné, ainsi que l'appartenance de la victime à ce groupe. La troisième Commission Vérité et Réconciliation doit, elle aussi, examiner de manière proactive l'adoption de critères de reconnaissance des victimes de disparitions forcées ainsi qu'un renversement de la charge de la preuve.

Le forum d'aujourd'hui vise à sensibiliser à la gravité des adoptions illégales à l'étranger et des disparitions forcées, et à explorer de nouvelles perspectives et méthodes pour une véritable quête de vérité. Je remercie KoRoot, le Danish Korean Rights Group, Child Rights Network Korea, ainsi que les députés seniors et collègues qui nous accompagnent, d'avoir permis la tenue de cet événement important.

J'adresse également mes remerciements aux intervenants et aux participants au débat — notamment M. Olivier de Frouville, ancien président du Comité des Nations Unies contre les disparitions forcées — pour

leurs efforts dévoués visant à établir la vérité et à garantir les droits des victimes. Avant tout, j'exprime mon respect et ma solidarité à M. Jun Bong-su et à toutes les personnes survivantes de disparitions forcées qui ont courageusement partagé leurs vécus.

En avril dernier, le Parti du Revenu de Base a présenté, en tant que position officielle du parti, un projet de révision complète de la Loi-cadre relative au règlement des affaires du passé, appelant à une recherche ininterrompue de la vérité. Nous continuerons à faire tout notre possible pour que, par le travail de la troisième Commission Vérité et Réconciliation, toute la vérité sur les crimes de disparitions forcées commis dans le cadre des adoptions à l'étranger soit pleinement révélée, et que l'honneur des survivants, qui ont longtemps souffert en raison de la négligence et de l'irresponsabilité de l'État, soit rétabli dans les plus brefs délais.

Je vous remercie.

Mot de félicitations



Young Seok SEO

Bonjour. Je suis Seo Young-seok, député à l'Assemblée nationale pour la circonscription Bucheon-si (Gap) dans la province de Gyeonggi et membre de la Commission de la Santé et du Bien-être de l'Assemblée nationale au sein du Parti Minjoo de Corée — également connu sous le nom de « Vitamine du Peuple ».

Je tiens à adresser mes plus sincères félicitations pour l'organisation de la *Conférence internationale sur la vérité concernant l'adoption – Crimes contre l'humanité : disparition forcée et adoption forcée*. J'exprime ma profonde gratitude à mes collègues co-organisateurs, les députés Nam In-soon, Yong Hye-in et Lee Sang-sik, et je rends hommage à l'engagement de KoRoot, du Denmark Korean Rights Group (DKRG), de Child Rights Solidarity, ainsi que des nombreuses organisations d'adoptés en Corée et à l'étranger. J'exprime également mon respect et ma solidarité envers les victimes qui ont fait preuve d'un courage remarquable en luttant pendant de nombreuses années pour révéler la vérité douloureuse des disparitions forcées et des adoptions forcées.

En mars dernier, la Commission Vérité et Réconciliation a officiellement établi que, durant les processus d'adoption internationale des années 1980, la falsification des dossiers, la séparation forcée, la dissimulation et la négligence, ainsi que la manipulation des informations relatives à la naissance constituaient des violations des droits humains et une forme de violence structurelle engageant la responsabilité de l'État. Il s'agit d'un moment déterminant où la vérité soutenue depuis longtemps par les victimes a été reconnue par une institution publique, clarifiant ainsi encore davantage la nécessité pour l'État de s'attaquer à ces questions de manière responsable.

Bien que notre système d'adoption ait récemment été transformé d'un modèle reposant sur des agences privées vers un cadre public, son fondement institutionnel ne peut pas encore être considéré comme suffisant. Des améliorations législatives et structurelles sont nécessaires pour assurer le fonctionnement solide et durable de ce système public, notamment en garantissant l'authenticité des dossiers d'adoption, en renforçant les dispositifs d'accompagnement des victimes, en assurant la transparence des procédures, et en consolidant le suivi post-adoption.

En tant que membre de la Commission de la Santé et du Bien-être de l'Assemblée nationale, je m'engage pleinement à œuvrer pour la mise en place stable du système public d'adoption et pour l'élargissement des droits des adoptés, tant en Corée qu'à l'étranger. Les témoignages des survivants-victimes qui seront présentés aujourd'hui, ainsi que les discussions au sein de la communauté internationale, constituent des enjeux urgents que la société coréenne doit aborder sans délai. Je ferai tout ce qui est en mon pouvoir pour que ces voix se traduisent en réformes politiques concrètes et effectives au sein de l'Assemblée nationale.

Je réitère mes félicitations pour la tenue de cette conférence internationale et je réaffirme ma volonté de poursuivre cette action de solidarité afin de faire progresser la recherche de la vérité et l'établissement des responsabilités pour les victimes de disparition forcée et d'adoption forcée. Je vous remercie.

Témoignage des victimes de disparitions forcées

Modératrice : Hyung Sook LEE

24 années volées par le Centre d'aide sociale Hope
Bong So CHEON

**L'adoption comme une disparition forcée : témoignage
d'une coréenne adoptée en France**
Aurélie TOUVÉ

**D'avoir été déclarée 'morte à la naissance' à être adoptée à
l'étranger : Ma quête de vérité**
Marie Louise WANG

J'ai perdu mon enfant sans même comprendre l'adoption
Yong Keum SONG

24 années volées par le Centre d'aide sociale Hope



Bong So CHEON

Bonjour

Je m'appelle Jeon Bong-su, je suis né en 1964 et je vis à Daegu.

Je suis né en 1964, mais le Centre d'aide sociale Hope (Hope Center / Heemang Won) a modifié de force mon année de naissance pour la faire passer à 1958. Je vis donc comme une personne née en 1958.

Je suis né et j'ai grandi à Onyang, dans la province de Chungcheongnam-do. Ma famille compte neuf enfants, et je suis le septième. J'ai deux sœurs cadettes. À Onyang, j'ai travaillé dans des stations de lavage auto, sur des chantiers et comme peintre.

Un jour de novembre 1998, alors que je traînais près de la gare de Cheonan, un moine m'a proposé de m'offrir un bol de *gukbap*. Je l'ai suivi et j'ai été emmené de force au Centre d'aide sociale Hope. J'y ai été placé contre mon gré et immédiatement mis à l'isolement. Un jour, ils m'ont dit de sortir, alors je suis sorti de ma cellule. Après cela, j'ai commencé à vivre en groupe avec de nombreux autres résidents.

Pendant mon séjour au centre d'accueil Hope Welfare Center, je connaissais le nom de mes parents et l'adresse de ma maison. Mais on me gardait enfermé et on ne me laissait jamais sortir. Je ne pouvais donc pas dire que je voulais rentrer chez moi, et personne au centre n'a jamais cherché à retrouver ma famille.

À Hope Welfare Center, je fabriquais des sacs. On commençait à 9h30 et on travaillait jusqu'à 17h. À l'époque, je gagnais 50 000 won par mois.

Dans ce centre, j'ai vu beaucoup de gens mourir, et j'ai aussi vu des gens essayer de s'enfuir, puis se faire rattraper et ramener. Alors je me suis dit : « Je ne devrais pas essayer de m'enfuir. » Et j'ai même été battu.

Un jour, j'ai appris que certains pensionnaires du centre partaient vivre dehors. Une amie proche allait aussi partir, alors j'ai commencé à penser que je voulais moi aussi partir et vivre seul. En juillet 2022, j'ai pu partir grâce au centre Naro.

Après avoir quitté le centre, j'ai repris mes études et j'ai trouvé un emploi. Un jour, une autre ancienne pensionnaire du centre d'accueil Hope m'a dit avoir une question à me poser, et nous avons commencé à discuter. La conversation a porté sur ma famille, et comme je connaissais mon adresse et les noms de mes parents, je suis allé au commissariat avec un professeur.

Là-bas, j'ai donné mon adresse et les noms de mes parents, et on m'a délivré une carte de résident. C'est à ce moment-là que j'ai appris mon âge réel. J'ai demandé à la police de retrouver ma famille, et environ trois heures plus tard, j'ai reçu un appel du commissariat m'annonçant qu'ils les avaient retrouvés. C'est ainsi que j'ai revu ma famille après 24 ans.

Je regrette la jeunesse perdue pendant ces 24 années passées au centre d'accueil Hope. Si je n'avais pas été kidnappé et emmené là-bas, si on n'avait pas falsifié mon âge, j'aurais revu ma famille plus tôt et j'aurais continué à vivre à Onyang. Je suis furieux.

J'ai donc porté plainte pour obtenir des excuses de la République de Corée, mais le gouvernement prétend que je suis allé au centre Hope de mon plein gré. Ce n'est pas le cas. C'est injuste. J'espère que la vérité éclatera et que je recevrai des excuses.

Et j'espère que les personnes comme moi, qui ont été séquestrées et maltraitées, recevront de l'aide et pourront enfin vivre leur vie.

Merci

L'adoption comme une disparition forcée : témoignage d'une coréenne adoptée en France



Aurélie TOUVÉ

Je m'appelle Aurélie, je suis née en Corée du Sud, le 27 mai 1983, sous le nom de KIM Bum Hee.

J'ai été adoptée en France la même année. Quarante ans après ma naissance, et après avoir retrouvé ma famille biologique, j'ai appris et compris en 2023 que je n'avais pas été abandonnée. J'ai été adoptée illégalement dans le cadre d'une adoption internationale. À la suite de cette découverte, j'ai déposé plainte en décembre 2023 auprès du Procureur de la République en France pour disparition forcée. Nous sommes en novembre 2025 et j'attends toujours une réponse. Tout ce que je présente ici s'appuie sur des documents qui m'ont été dévoilés au compte-goutte depuis 2023, sur des témoignages, et à la suite de démarches conjointement menées par ma famille avec un avocat en Corée du Sud.

En septembre 2023, je suis allée visiter l'agence d'adoption à Séoul afin de récupérer une copie de mon dossier, copie qui s'avérera par la suite partielle. Ma sœur aînée prend le temps de lire l'intégralité des pièces. A la lecture de ce dossier, plusieurs éléments lui posent déjà question. Un document indique que je suis née d'une "mère non mariée".

Or, c'est faux. Mes parents sont mariés depuis plus de cinquante ans maintenant. Un autre document affirme que ma mère m'a déposée elle-même à l'agence. C'est encore faux, et elle l'a toujours démenti. Ce même document décrit pourtant ma famille dans le détail : les études de mes parents, leurs âges, leurs métiers, et l'existence de mes quatre sœurs nées avant moi. Il est même précisé qu'ils sont mariés, ce qui contredit la déclaration précédente. Comment savaient-ils tout ça ? Impossible d'obtenir un tel niveau de précision alors même que l'agence déclare dans mon dossier « père et mère inconnus ».

Enfin, l'agence a créé un registre d'orphelin à mon nom. Comment justifier ce registre alors qu'elle disposait des informations complètes sur mes parents ?

Face à tant d'incohérences révélées par ma sœur aînée, grâce à la lecture de mon dossier écrit en coréen, nous décidons de retracer la chronologie exacte de ma naissance avec l'aide de nos deux parents.

Le 27 mai 1983, jour de ma naissance, ma mère accouche dans un établissement à Seongnam. Il ne s'agit pas d'un hôpital public, mais d'un centre de naissance réservé aux familles démunies dont ma mère se souvient très bien du nom.

Le directeur du centre de naissance leur propose un placement temporaire : me confier à une famille

chrétienne, en précisant qu'ils pourront venir me voir et me récupérer quand ils le souhaiteront. Mes parents acceptent, persuadés qu'il s'agit d'une solution provisoire.

Selon les papiers de mon dossier, le 28 mai, soit dès le lendemain de ma naissance, je suis admise à l'agence d'adoption internationale. Cette rapidité montre que, dès le départ, le directeur du centre n'avait aucune intention de me confier temporairement, comme il l'avait pourtant annoncé à mes parents.

Mais lorsque mes parents reviennent me chercher, j'ai bien sûr disparu. Le centre de naissance a lui-même disparu. En lieu et place, un poste de police. Aucune trace, aucun dossier, aucune explication. Et surtout, plus de bébé. Les gens de la paroisse disent à mes parents que je suis sûrement partie à l'adoption dans un autre pays. Leur bébé s'est volatilisé avant qu'ils aient eu le temps de me récupérer.

Le 5 août 1983, soit deux mois seulement après ma naissance, mon adoption en France est ratifiée par l'agence d'adoption et les autorités françaises. Le 16 septembre de la même année, j'arrive en France. J'ai quatre mois à peine, et je vais vivre une existence douce et paisible auprès de ma famille adoptive pendant les vingt premières années de ma vie.

Ce n'est qu'en février 2003, l'année de mes 20 ans, que je contacte l'agence d'adoption depuis la France. A ce moment-là, j'ignorais totalement que ma famille biologique était à ma recherche depuis 1998.

A partir de ce moment-là le rapprochement est désormais possible. Il est même rapide. Nous sommes enfin réunis, vingt ans après mon adoption.

Ce n'est pourtant qu'après 20 années supplémentaires, lorsque je récupère la copie de mon dossier en 2023, qu'à la lumière des recoupements effectués avec ma sœur aînée, mes parents découvrent que ce qu'ils avaient vécu n'était ni un accident, ni le fruit d'une négligence de leur part, mais bien une prise d'enfant organisée.

Et moi, je comprends pour la première fois que mes parents étaient revenus me chercher non pas par regret, mais parce que c'était simplement prévu ainsi. Ils n'avaient jamais renoncé à leurs droits parentaux. Leur fille a disparu du jour au lendemain. Je n'avais jamais été abandonnée. J'ai été enlevée.

Nous demandons alors, mes parents, mes sœurs et moi-même, une confrontation avec l'agence d'adoption quelques jours après ma première visite. Nous sommes fin septembre 2023. A partir de cette rencontre, des documents me seront progressivement dévoilés. D'abord, le registre d'habitation que mon père a dû fournir au directeur du centre d'accouchement avant de me laisser. Il ne figure pourtant pas dans la copie du dossier que l'on m'a remise. C'est uniquement lors de cette entrevue qu'il surgit au bout d'une heure de discussions animées. Ce registre de résidence établit l'identité complète de mes parents et de mes 4 sœurs. Ce jour-là, l'agence d'adoption refuse de le restituer à mes parents, ni même de nous en fournir une copie. Nous nous contentons de le prendre en photo. Ce document prouve que l'agence connaissait ma famille dès le départ. Il contredit de nouveau la version selon laquelle j'aurais été abandonnée, et que je suis née de père et mère inconnus.

Un élément reste cependant absent : le consentement d'adoption, que l'agence affirme détenir, mais qu'elle refuse de nous montrer malgré nos demandes répétées.

L'agence d'adoption oppose toujours la même justification : selon leur interprétation de la Loi Spéciale sur l'Adoption, elle ne serait pas tenue de montrer ce document car il ne figure pas dans la liste des pièces à présenter. À ce stade, avec ma famille, nous comprenons que chaque document apparaîtra uniquement sous la contrainte d'un représentant de la loi. Mes parents engagent donc un avocat afin de récupérer le consentement d'adoption pour pouvoir prouver qu'il est falsifié. Ce consentement est l'acte central qui aurait scellé mon départ. Il porte sur ma naissance, mon identité et la signature censée avoir été posée par ma mère.

A l'issue de la plainte déposée en octobre 2024 par mon avocat auprès de la Commission de la Protection des Informations Personnelles, on me restitue une lettre écrite par mon père en 1998, lettre qu'il m'a adressée lorsqu'il découvre que j'ai été adoptée à l'étranger. De nouveau, je n'en ai pas la copie dans mon dossier. Et l'agence ne m'en a pas parlé non plus lors de ma première visite. Cette lettre m'a été dissimulée pendant vingt-cinq ans. Il a fallu le recours à un avocat pour pouvoir en disposer.

Après une longue bataille et de nombreuses procédures menées par l'avocat, l'agence d'adoption accepte en mai 2024 de nous présenter le consentement d'adoption. Il est présenté à mon avocat et à mes parents, mais seulement en partie, sans autorisation de le photographier. La moitié reste masquée, car elle contiendrait les informations d'une personne extérieure à ma famille. Pourquoi cette personne intervient-elle dans un consentement censé engager uniquement mes parents ? Et pourquoi son identité reste-t-elle cachée ? L'agence confirme qu'il ne s'agit pas de mon père, alors comment ai-je pu être adoptée sans son consentement ? La partie visible montre une empreinte digitale.

Ma mère affirme à mon avocat qu'elle ne lui appartient pas, et que la signature écrite n'est pas de sa main non plus. Alors, qui a écrit ? Qui a apposé cette empreinte ?

Et dans quelles conditions ? La date inscrite sur le consentement correspond au jour de ma naissance.

Comment une mère qui vient d'accoucher pourrait-elle rédiger un consentement d'abandon éclairé, immédiatement après la naissance ? Et pourquoi le père, toujours marié à ma mère et détenteur de l'autorité parentale conjointe, n'apparaît-il pas ?

Depuis plus de quarante ans, le consentement d'adoption, pièce centrale qui prouve l'illégalité de mon adoption, reste inaccessible, retenu de façon délibérée par l'agence d'adoption.

Comment puis-je établir qu'un crime a été commis si l'on me refuse les preuves depuis plus de quarante ans ? Si l'agence s'appuie sur un document partiellement masqué pour prouver la légalité de mon adoption, alors ce devrait être à elle de montrer que tout était fait dans les règles. Et non l'inverse. Les victimes ne devraient pas avoir à porter la charge de prouver l'illégalité d'un processus imposé à leur naissance.

Ce refus de divulgation d'archives personnelles n'est pas administratif. Il bloque la vérité.

Il empêche la reconstitution des faits.

Ces faits relèvent d'une violation continue de mes droits fondamentaux. Il prolonge une disparition

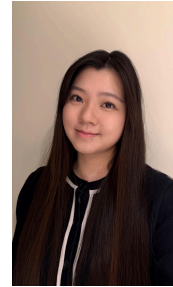
commencée en mai 1983. La disparition forcée ne se limite pas à l'enlèvement.

Elle englobe la rétention volontaire d'informations qui peuvent permettre de comprendre ce qui est arrivé à une personne. Dans mon histoire, l'adoption n'efface pas la disparition. Elle en fait partie. Tant que les documents essentiels restent inaccessibles, l'infraction continue.

Je demande l'accès complet à mon dossier. Je demande la divulgation du consentement d'adoption. Je demande l'identification de la personne ayant signé à la place de ma mère. Je demande que l'identité de la personne qui m'a emmenée à l'agence d'adoption soit établie. Je demande la reconnaissance de mon enlèvement comme une disparition forcée. Ma famille coréenne et ma famille adoptive, toutes deux victimes au même titre que moi, soutiennent ma démarche et réclament réparation. Nous attendons que les faits soient établis et que les responsabilités soient clarifiées.

Merci de m'avoir écoutée. Je suis Aurélie Tuvé, Kim Bum Hee, et je vous ai présenté ici ce que l'on me refuse depuis plus de quarante ans : l'accès à la vérité.

D'avoir été déclarée « morte à la naissance » à l'adoption à l'étranger : ma quête de vérité



Marie-Louise WANG

Je m'appelle Marie-Louise. J'ai 33 ans et je suis une enfant adoptée vivant au Danemark.

Pendant longtemps, j'ai vécu une vie construite sur une histoire qui n'était pas la mienne.

Mes parents adoptifs y croyaient. J'y croyais. Car qui remet en question une adoption facilitée par des agences reconnues en Corée du Sud et au Danemark, approuvée par les gouvernements et enrobée d'un récit qui semble empreint de compassion ?

Je suis née à Séoul en juin 1992. Peu de temps après, j'ai été envoyée au Danemark en vue d'une adoption internationale.

Mes papiers d'adoption racontaient une histoire simple et touchante : ma mère biologique était une jeune étudiante célibataire, incapable de s'occuper d'un bébé, et elle a pris la décision déchirante de me confier à l'adoption, afin que je puisse avoir un foyer aimant où je serais désirée. C'était une histoire conçue pour faire paraître mon adoption inévitable et sans tache.

Mais la vérité... je crois qu'elle n'était pas censée me parvenir, mais en 2023, j'ai découvert un document précieusement conservé.

Lorsque j'ai contacté les services sociaux coréens pour demander mon dossier d'adoption, j'ai été surprise d'apprendre que les informations reçues ne correspondaient pas à l'histoire que j'avais toujours crue.

Un document a tout changé, en quelques lignes seulement. Ce document que j'ai entre les mains.

Ma mère biologique s'est rendue dans une clinique alors qu'elle était enceinte de 34 semaines.

Elle était en bonne santé. J'étais en bonne santé. Rien dans le dossier n'explique pourquoi on avait soudainement déclenché son accouchement, ce qui a entraîné ma naissance prématurée. Pourtant, c'est ce qui s'est passé. Et après avoir accouché, on lui a annoncé que son bébé, que j'étais, était décédé.

Elle a quitté la clinique en croyant que j'étais morte, mais ce n'était pas le cas.

J'ai été confiée aux services sociaux coréens par le médecin de la maternité, avec l'« aide » d'une assistante sociale de ces services.

Ma mère biologique ne m'a jamais abandonnée. Elle a été victime d'un mensonge cruel.

Après avoir découvert cette vérité, je suis retournée chez KSS et leur ai demandé des explications.

Ils m'ont dit qu'ils avaient le consentement requis pour l'adoption, mais que celui-ci était protégé par la loi sur la protection de la vie privée.

Or, dans une telle situation, il n'y a pas de consentement. Comment pourrait-il y en avoir un ?

On ne peut pas consentir à l'adoption de son enfant si on vous a annoncé son décès. Et KSS n'ignorait rien de tout cela. Ils ont signé les papiers.

C'est bouleversant de réaliser que mes origines, mon identité, reposent sur des mensonges.

Mon adoption n'était ni un acte d'amour ni une nécessité. C'était un système qui séparait une mère de son bébé par appât du gain.

Un système qui protégeait tout le monde sauf moi, mes parents adoptifs et ma mère biologique.

Pendant des années, on a appelé cela une adoption, mais il est temps de changer de perspective.

Il faut appeler un chat un chat : c'est une disparition forcée.

Découvrir cette vérité n'est pas une fin en soi. C'est le début d'une nouvelle vie. C'est la quête de la vérité, toute la vérité. J'ai appris qu'à partir du moment où l'on pose de vraies questions, les gens se sentent mal à l'aise.

Soudain, tout est dissimulé derrière des « lois sur la protection de la vie privée ». On me refuse un test ADN car je ne suis « pas portée disparue ».

Mon histoire, qui paraissait simple au départ, s'est révélée être une dissimulation.

Et le plus triste ? Je ne suis pas seule. De nombreux enfants adoptés découvrent que leurs origines ont été réécrites, édulcorées et bâties sur des mensonges.

Alors, que faire maintenant ?

Je veux des réponses, mes parents adoptifs aussi, et ma mère biologique mérite des réponses.

Aucune mère ne devrait vivre toute sa vie en croyant son bébé mort, alors qu'il est vivant.

Il ne s'agit pas d'un cas isolé. Il s'agit de tous ceux qui ont été adoptés illégalement, et il s'agit de responsabilisation.

La Corée du Sud a ratifié la Convention internationale contre les disparitions forcées. Ces protections doivent s'appliquer. Elles doivent avoir un sens.

J'espère que mon histoire contribuera à sensibiliser l'opinion publique.

Je ne peux qu'espérer et demander que justice soit faite, car les systèmes qui ont permis cela et les personnes responsables ne devraient pas pouvoir continuer à se dédouaner.

J'ai perdu mon enfant sans même comprendre le sens de l'adoption.



Yong Keum SONG

Je suis la mère de Kim Bum Hee, une Coréenne adoptée et envoyée en France.

Je l'ai mise au monde en 1983 dans une petite maternité. À cette époque, j'avais déjà quatre filles. Mon mari était l'aîné de sa famille, et la pression était forte pour avoir un fils. À cette époque, les femmes qui n'avaient que des filles étaient souvent mal vues. Notre famille connaissait également des difficultés financières.

Après la naissance de ma cinquième fille, j'étais très inquiète. La directrice de la maternité m'a dit qu'une famille sans enfant saurait bien l'élever et m'a parlé d'un couple de diacres. Nous pensions que ce couple prendrait soin de Bum Hee. Il y avait une église juste à côté de chez nous, et je me disais que je pourrais ainsi voir ma fille grandir de loin. Lorsque j'ai posé la question, la directrice de la maternité m'a confirmé que c'était possible, et j'ai été soulagée.

Après la naissance de ma cinquième fille, j'étais très inquiète. La directrice de la clinique m'a dit qu'une famille sans enfant l'élèverait bien et m'a parlé d'un couple de diacres. Nous pensions que ce couple prendrait soin de Bum Hee. Il y avait une église juste à côté de chez nous, alors je me disais que je pourrais toujours voir mon bébé grandir de loin. Quand j'ai posé la question, la directrice de la clinique m'a confirmé que c'était possible, et j'ai été soulagée. J'ai beaucoup réfléchi et je me suis dit que grandir dans un meilleur environnement serait peut-être bénéfique pour elle. Ils ont dit qu'ils avaient besoin de notre dossier familial pour lui trouver une bonne famille, alors je leur ai remis le dossier complet avec toutes les informations sur notre famille. Je souhaitais seulement que mon bébé grandisse bien. Mais je venais d'accoucher, j'étais épuisée et perdue. Dans cet état, je n'arrivais pas à prendre une décision éclairée. Je ne savais pas que c'était l'adoption. Et je ne savais absolument pas qu'il s'agissait d'une adoption internationale. Si j'avais su que je ne la verrais pas grandir, je ne l'aurais jamais laissée partir. Nos vies ont basculé à cet instant, et le lien qui nous unissait a été rompu sans même que nous, les parents, comprenions ce qui se passait. Il n'y a eu aucune procédure, aucun accompagnement, aucun formulaire de consentement. J'ai appris plus tard que la directrice de la clinique l'avait envoyée directement à Holt dès que nous avions laissé le bébé. L'histoire du diacre n'était qu'un mensonge pour nous tromper.

Après notre retour à la maison, les douleurs ont commencé. Je ne pouvais ni manger ni dormir. Je pleurais seule et me réveillais en pleurs au milieu de la nuit. Peu après, je suis retournée à la clinique car je ne

pouvais pas vivre sans mon bébé. Je voulais la ramener à la maison. Je ne me souviens plus de la date exacte, mais mes seins étaient gonflés et très douloureux à cause du lait, donc c'était peu de temps après l'accouchement. Mais la clinique avait déjà déménagé. Je n'avais aucun moyen de savoir où était mon enfant, ni même si elle était encore en vie. Les gens autour de moi disaient que la clinique l'avait probablement envoyée en adoption à l'étranger et me conseillaient d'abandonner les recherches.

Dès lors, ma vie me semblait irréelle. Je vivais rongée par la culpabilité et la peur, persuadée d'avoir abandonné mon enfant. Je ne pouvais en parler à personne. J'ai pleuré en secret pendant des décennies. Chaque mercredi, je regardais l'émission de télévision consacrée aux familles séparées, espérant qu'elle me recherche. J'ai pleuré devant la télévision pendant des années. Ma famille m'a vue pleurer et a fini par me demander ce qui se passait. C'est alors seulement que mes enfants et le reste de ma famille ont appris l'adoption. Mes enfants ont contacté de nombreux organismes d'adoption et ont finalement découvert qu'elle avait été envoyée en France par l'intermédiaire de Holt. J'ai éprouvé un soulagement fugace en sachant qu'elle était en vie. J'étais sous le choc d'avoir été trompée et que notre bébé ait été emmené si loin.

En 1998, nous sommes allés à Holt et les avons suppliés de nous aider à la contacter, mais ils ont répété que c'était impossible car elle était encore mineure. Même après notre déménagement, nous avons toujours laissé nos nouvelles coordonnées. Nous attendions qu'elle nous retrouve. Mais Holt n'a fait aucun effort pour nous mettre en contact. Ils nous ont simplement dit d'attendre.

Finalement, en janvier 2003, nous avons eu des nouvelles de Bum Hee par l'intermédiaire de Holt. En juillet de la même année, elle est venue en Corée avec ses parents adoptifs français et a rencontré sa famille coréenne.

Même après cela, elle a souffert de dépression et a eu des pensées suicidaires. En septembre 2023, elle est allée à Holt pour demander les papiers d'adoption et en a obtenu des copies. Le personnel lui a dit : « Vos parents ont signé le formulaire de consentement à l'adoption, vous avez donc été envoyée à l'étranger. » C'était différent de ce qu'elle avait cru pendant plus de 20 ans. Elle était désemparée et se sentait trahie, pensant que nous lui avions menti. Elle était profondément blessée.

Ce n'est qu'après avoir reçu les documents que j'ai appris l'existence d'un formulaire de consentement à l'adoption. J'étais sous le choc, car je n'avais jamais apposé mon empreinte digitale sur un tel document. Holt a refusé de nous montrer le formulaire et s'est montré très impoli. Ils insistaient sur le fait que je l'avais signé. Je ne comprenais pas pourquoi ils refusaient de nous le montrer si c'était vrai. Nous avons engagé un avocat et dépensé une fortune. Finalement, on nous a autorisés à consulter une partie du formulaire. Holt avait prétendu à plusieurs reprises que les empreintes digitales des parents figuraient sur le document, mais juste avant de nous le montrer, ils ont soudainement changé de version. Ils ont affirmé qu'un membre de la famille du père avait consenti à l'adoption et avait signé à mes côtés. L'écriture et l'empreinte digitale n'étaient évidemment pas les miennes. Je n'avais jamais écrit ni signé un tel document.

Le formulaire contenait le consentement d'une tierce personne qui n'était ni le parent biologique ni un membre de la famille. Qui a décidé de l'adoption de mon enfant ?

À une époque où nous étions perdus, sous pression, et ne savions plus quoi faire car nous n'avions pas de fils, Holt nous a trompés et nous a enlevé notre bébé sans difficulté. Ils ne nous ont laissé ni le temps de réfléchir, ni la possibilité de le récupérer. Ils ont falsifié les documents. Ils ont envoyé notre bébé dans un pays lointain d'où nous ne pourrions plus jamais la revoir. Et pendant des années, ils nous ont séparés.

Qui doit maintenant assumer la responsabilité de toutes les larmes et de la douleur que ma famille en Corée et ma fille en France ont endurées pendant si longtemps ?

Je veux que le gouvernement sud-coréen et Holt soient tenus responsables.

— Résumé de l'entrevue par KoRoot —

Présentations

Président de séance

Seok Tae LEE, Ancien juge de la Cour constitutionnelle

Établissement des faits et charge de preuve



Jae Sung LEE, Université Konkuk, Faculté de Droit

1. Le problème

Dans les processus de recherche de la vérité, l'établissement des faits constitue l'étape la plus problématique. En cas de violations des droits humains, disparitions, massacres, morts suspectes, torture, violences sexuelles, traitements cruels, détentions arbitraires (ou procès inéquitables) et adoptions forcées, les victimes qui ne peuvent présenter de preuves directes, ni même de preuves vaguement liées à l'affaire, ne sont souvent pas reconnues comme telles. Si l'on exigeait des preuves ordinaires et hautement probables pour ce qui ne sont, au fond, que des allégations plausibles, des affirmations très probables compte tenu des circonstances au moment des faits, de nombreuses affaires resteraient à jamais irrésolues.

À la Commission de vérité et de réconciliation, les principales catégories de préoccupation comprenaient : les enlèvements, les détentions, les disparitions et les morts suspectes de civils pendant la guerre de Corée ; les cas d'enlèvement ; les décès survenus après la libération de prison ou en prison où seuls des restes ou un cadavre ont été rendus à la famille ; et les cas d'adoption forcée dans lesquels aucun document public n'a été produit ou dans lesquels l'accès à de tels documents était impossible.

Cependant, les institutions chargées de surmonter ces difficultés d'établissement des faits sont les commissions nationales d'enquête et les tribunaux. Même lorsqu'une demande semble fondée, en l'absence de documents publics, d'articles de presse ou d'études et conclusions d'experts, nombre de demandes sont rejetées, voire même des enquêtes suspendues dans l'attente de preuves plus favorables. Les tribunaux, en particulier, disposent rarement des moyens ou des conditions nécessaires pour faire éclater la vérité dans de tels cas. Sans la persévérance de la victime et les décisions de la Commission, les tribunaux hésitent à accepter même des allégations très plausibles. La prudence étant de mise dans les décisions judiciaires, cette attitude ne saurait être critiquée. Lorsque la Commission rend des décisions progressistes, les tribunaux confirment parfois ces décisions en faveur des victimes.

Dans les affaires longtemps dissimulées, la question centrale est de savoir si la charge de la preuve incombe aux victimes ou si l'État doit être tenu responsable sur la base de circonstances objectives (pratiques coutumières), de cas similaires ou de preuves circonstanciées. Concernant les cas d'adoption, notamment la falsification de documents ou les « adoptions dématérialisées », de nouveaux critères de reconnaissance de la victimisation doivent être établis. Dans certains cas, le principe « celui qui allègue doit prouver » doit être remplacé par « celui qui sait doit prouver ».

La Cour interaméricaine des droits de l'homme résume cette approche par le principe : « En cas de doute, le bénéfice du doute est pour la victime » (in dubio pro victima). Cela signifie que les organismes d'État impliqués dans la surveillance, l'enquête, l'arrestation, la détention ou l'enlèvement ont la charge de réfuter les allégations plausibles de la victime.

Pour construire un tel cadre de charge de la preuve, les principes de renversement de la charge et de présomption doivent être intégrés aux lois habilitantes, aux décrets d'application et aux normes de la Commission. Autrement dit, il faut laisser une marge de manœuvre aux organes d'enquête. Bien que la législation actuelle prévoit des amendes ou des sanctions lorsque les organismes concernés ne fournissent pas les documents demandés, du point de vue d'une commission chargée de la recherche de la vérité et de la réparation des préjudices causés aux victimes, ces sanctions sont moins nécessaires que de s'assurer que le défaut de production de documents entraîne directement des décisions favorables aux victimes. Des principes similaires existent déjà en matière de contentieux civil.

La Commission africaine des droits humains et des peuples fait peser la charge de la preuve sur les gouvernements dans les procédures de réparation des violations des droits de l'homme, ce qui est inhabituel. La Commission interaméricaine doit prouver le bien-fondé factuel d'une requête lorsqu'elle saisit la Cour interaméricaine. En règle générale, la charge de la preuve incombe au demandeur. Cependant, comme la charge de la preuve n'est pertinente qu'au stade final, lorsque les preuves s'équilibrent entre les deux parties, le renversement de la charge peut permettre de résoudre les affaires avant d'atteindre ce stade. Lorsque les faits restent indéterminables (non liquéfié), la loi fait peser la charge sur le demandeur.

Dans de nombreux cas, les tribunaux internationaux des droits humains ont reconnu que la charge de la preuve se déplace de la victime vers l'État selon le stade de la procédure, et que si l'État ne présente pas de preuves suffisantes pour réfuter les faits, sa responsabilité est établie.

Les spécialistes identifient deux contextes justifiant ce renversement de la charge de la preuve : lorsqu'il existe un déséquilibre important dans l'accès à l'information entre l'État auteur des violations et la victime, et lorsqu'il existe un schéma systématique de violations des droits humains

Ces deux facteurs peuvent se recouper.

Par exemple, les massacres de membres de la Ligue nationale d'orientation pendant la guerre de Corée du Sud ou les disparitions forcées en Amérique latine ont été perpétrés clandestinement, à grande échelle et de manière systématique, répondant ainsi aux deux conditions.

L'adoption forcée correspond également à ce modèle : les enfants adoptés ne comprennent pas leur situation, l'accès ultérieur à l'information est difficile, et environ 200 000 enfants ont été soumis à une adoption forcée par diverses procédures.

2. Quand il existe un déséquilibre dans l'accès aux preuves

Lorsqu'un demandeur allègue une violation des droits humains imputable à l'État, l'organisme compétent a l'obligation de produire les documents pertinents. Cette obligation découle de l'obligation de l'État de protéger le public et de révéler la vérité, ce qui correspond au droit du demandeur à la vérité.

Des problèmes de communication d'informations surviennent à plusieurs étapes :

- Les informations peuvent ne jamais avoir été produites ;
- Elles peuvent avoir été dissimulées ou détruites ;
- Elles peuvent avoir été légalement éliminées conformément aux délais de conservation
- Ou encore, les organismes peuvent affirmer faussement que des documents n'existent pas, ou ne produire que des éléments périphériques.

Dans tous ces cas, si l'organisme compétent ne peut fournir de preuves contraires appropriées, les allégations de la victime doivent être présumées vraies et la responsabilité de l'État reconnue.

De nombreux cas illustrent ce déséquilibre d'accès à l'information, ce « terrain de jeu faussé ». Par exemple, un étudiant militant peut réussir les épreuves écrites d'un concours de la fonction publique d'État, mais échoue à l'entretien pour des raisons inconnues. Sans communication des modalités ou des critères d'examen, le candidat ne peut savoir pourquoi sa candidature a été rejetée. Si le gouvernement refuse de fournir ces documents ou ne peut donner d'explication adéquate, on peut en déduire un abus de pouvoir de l'État.

Autre exemple : une personne en bonne santé, conduite par un service de renseignement pour interrogatoire, est rendue décédée à sa famille quelques jours plus tard. La famille ignore ce qui s'est passé. Dans de tels cas, les instances internationales estiment que la charge de la preuve est inversée.

La Cour interaméricaine a statué à plusieurs reprises, notamment dans les affaires de disparition forcée, que lorsque l'État détient les informations pertinentes, le requérant ne peut être tenu d'en apporter la preuve et l'État ne peut prétendre être dans l'incapacité de se défendre. La Commission interaméricaine a adopté le raisonnement du Comité des droits humains des Nations Unies selon lequel, étant donné que les requérant.e.s et les États ont rarement un accès égal aux preuves, et que les États en détiennent souvent l'exclusivité, la charge de la preuve ne peut reposer uniquement sur les requérant.e.s. La Cour européenne des droits humains suit la même logique.

Ainsi, le principe « celui qui affirme doit prouver » (*affirmanti incumbit probatio*) se transforme en « celui qui sait doit prouver » (*cognoscenti incumbit probatio*).

Roberts identifie trois conditions pour l'inversion de la charge de la preuve en raison d'un déséquilibre des éléments de preuve :

1. Le demandeur doit d'abord présenter des allégations plausibles et suffisantes pour engager une procédure.
2. L'accès du demandeur aux informations pertinentes doit lui être interdit.
3. L'État doit détenir les informations pertinentes ou être en mesure d'y accéder.

Le Statut de Rome définit la disparition forcée comme l'arrestation, la détention ou l'enlèvement par l'État ou des organisations politiques dans l'intention de soustraire des individus à la protection juridique, en refusant de reconnaître la privation de liberté ou de divulguer leur sort ou le lieu où ils se trouvent (art. 7(2)(I)). Cependant, la troisième condition de l'arrêt Roberts peut ne pas s'appliquer lorsque les auteurs n'ont jamais produit de documents ou les ont déjà détruits.

Lorsqu'un tel déséquilibre d'information existe entre la victime et l'État, la charge de la preuve incombe à ce dernier. Cette disparité résulte du fait que les victimes de violations des droits humains sont sous le contrôle occulte du pouvoir étatique. À titre d'exemple, on peut citer :

- Un détenu politique décédant dans des circonstances inexplicables ;
- Un prisonnier décédant sans soins médicaux appropriés après avoir été torturé ;
- Un étudiant décédant en fuyant une surveillance ;
- Une personne décédant en tentant d'échapper à une arrestation ou à un encerclement.

Si les services impliqués dans la surveillance, la poursuite, l'encerclement ou la détention ne peuvent apporter de réfutation convaincante, l'État doit être tenu responsable. Si une victime a été placée en garde à vue et n'est jamais revenue ou est décédée, et que les services ne peuvent prouver clairement sa libération ni établir la cause du décès, la disparition forcée est reconnue et l'État est tenu responsable.

3. Quand les violations systémiques des droits humains existent

Parmi les exemples, citons les détentions massives ou les massacres de groupes opposés en temps de guerre ou de conflit civil, la persécution de militants sous des régimes autoritaires, les morts suspectes et les disparitions. Si les familles ou les collègues des victimes peuvent témoigner de convocations forcées, d'arrestations, de meurtres ou du traitement des corps, ces faits peuvent aisément établir la responsabilité de l'État.

Même en présence de preuves concrètes démontrant que l'État a commis des violations des droits humains, sa responsabilité peut être reconnue. Par exemple, si une personne a été arrêtée par la police puis a disparu ou a été retrouvée morte ultérieurement dans un lieu sans lien avec l'affaire.

Toutefois, lorsque ni l'arrestation ni le sort de la victime ne sont clairement établis, la question de la charge de la preuve se pose. Si de tels cas sont extrêmement rares, la charge de la preuve peut incomber au demandeur. Mais si les enlèvements forcés sont systématiques ou à grande échelle, et qu'un schéma discernable se dégage, le mode de preuve doit être adapté. Comme on le voit dans les lois allemandes sur l'indemnisation des victimes nazies, lorsque les nazis persécutaient systématiquement des groupes ciblés, les individus pouvaient prouver indirectement la persécution en montrant (1) qu'ils appartenaient au groupe ciblé et (2) que le groupe était soumis à une persécution systématique.

Ce type de preuve repose sur des cas analogues, c'est-à-dire sur des preuves circonstanciellées et des schémas récurrents. La Cour interaméricaine utilise deux éléments :

1. L'existence de violations généralisées des droits humains (un schéma général), et

2. Un lien entre ce schéma général et le cas particulier.

Si le demandeur prouve les deux, l'État doit réfuter sa responsabilité en prouvant qu'il n'a pas fait disparaître la personne.

Roberts propose à nouveau trois conditions pour le renversement de la charge de la preuve dans les cas de violation systémique :

1. Le demandeur doit présenter des allégations plausibles de la violation subie.
2. Le demandeur doit apporter la preuve de l'existence d'un schéma systémique spécifique de violations.
3. Le demandeur doit démontrer que la violation alléguée s'inscrit dans ce schéma.

En Corée du Sud, où la destruction et la dissimulation de documents étaient monnaie courante, ces méthodes de preuve indirectes, fondées sur des schémas récurrents, sont essentielles dans les affaires de culpabilité par association, de listes noires, de morts suspectes à caractère politique, de disparitions ou de persécution de militants.

Si les opinions dissidentes dans l'affaire Yeosu-Suncheon avaient pleinement pris en compte le fait que les tribunaux de l'époque du gouvernement militaire américain se livraient de facto à des exécutions sommaires en bafouant les droits de la défense, elles n'auraient pas exigé de preuve individualisée de la culpabilité de l'État. Les familles des victimes avaient déjà formulé des allégations plausibles dans leurs demandes de nouveau procès, la Commission Vérité et Réconciliation avait confirmé l'existence d'exécutions sommaires généralisées par les tribunaux militaires et les victimes avaient démontré avoir été soumises à de telles procédures.

Ce n'est qu'en comprenant les schémas des violations des droits humains à grande échelle ou systématiques, massacres, morts suspectes et disparitions, que les praticiens du droit peuvent échapper au piège d'un formalisme au cas par cas.

*Le professeur Lee a beaucoup écrit sur la question de l'établissement des faits et de la charge de la preuve. Pour approfondir le sujet, veuillez consulter par exemple : Lee, J. S. (2023). « Justice transnationale et méthodologies juridiques : focus sur l'établissement des faits et la charge de la preuve ». *Democratic Legal Studies*, vol. 83, p. 109-156 (DOI : 10.15756/dls.2023..83.109).

Discours d'ouverture

Président de séance

Seok Tae LEE, Ancien juge de la Cour constitutionnelle

Conférence internationale sur la Vérité en matière d'Adoption : Crimes contre l'humanité, Disparitions forcées et Adoptions forcées – 26 novembre 2025*



Olivier de FROUVILLE, Professeur à l'Université Paris-Panthéon
Vice-président du Comité des Nations Unies sur les disparitions
forcées

Je tiens à remercier très sincèrement les organisateurs pour leur invitation à participer à cette conférence internationale.

Comme cela a été indiqué, j'ai été Président – et je suis désormais Vice-Président – du Comité des Nations Unies sur les disparitions forcées. Toutefois, je m'exprimerai ici à titre strictement personnel, en tant qu'expert indépendant et universitaire en droit international, et mes propos ne reflètent pas nécessairement la position du Comité ni celle des Nations Unies.

Je traiterai de trois questions juridiques relatives aux adoptions illégales.

La première concerne la possibilité de qualifier le phénomène des adoptions illégales comme crime international, notamment comme crime contre l'humanité ou comme disparition forcée.

La deuxième porte sur l'étendue de l'obligation des États de poursuivre ces crimes en vertu du droit international.

Enfin, la troisième question vise les éventuels obstacles à la poursuite des adoptions illégales, tels que le principe de non-rétroactivité de la loi pénale et la prescription.

I. Adoptions illégales et crimes internationaux

Je souhaiterais rappeler qu'en septembre 2022, deux organes conventionnels des Nations Unies — le Comité sur les disparitions forcées et le Comité des droits de l'enfant — ainsi que quatre procédures spéciales (le Rapporteur spécial sur la vente et l'exploitation sexuelle des enfants, la Rapporteuse spéciale sur la traite des personnes, le Rapporteur spécial sur la justice transitionnelle et le Groupe de travail sur les disparitions forcées ou involontaires) ont adopté une déclaration conjointe sur les adoptions internationales illégales.

Le paragraphe 4 de cette déclaration porte sur la dimension criminelle :

« Les adoptions internationales illégales peuvent violer l'interdiction d'enlever, de vendre ou de faire le trafic d'enfants et, dans des circonstances spécifiques, peuvent également violer l'interdiction de la disparition forcée. Dans certaines conditions prévues par le droit international, les adoptions internationales illégales peuvent constituer des crimes graves, tels que le génocide ou les crimes contre l'humanité. »[1]

Dans cette partie, je me concentrerai sur les crimes contre l'humanité, les disparitions forcées et les infractions spécifiques énumérées à l'article 25 de la Convention internationale pour la protection de toutes les personnes contre les disparitions forcées (ci-après la CIPPDF).

A. Crimes contre l'humanité

1. L'affaire RuSHA

Il est important de rappeler que la question des adoptions illégales, y compris des adoptions internationales illégales, a été largement examinée dans l'une des affaires pénales internationales de l'après-guerre, la célèbre affaire dite « **RuSHA** »[2][3].

Cette affaire concerne la politique de « germanisation » des populations dans les territoires occupés, populations que les nazis considéraient comme présentant de « bonnes caractéristiques raciales ». Ce plan incluait l'enlèvement d'enfants et leur adoption en Allemagne[4], faits poursuivis sous le chef d'accusation n° 1 :

« Le premier chef [...] allègue que ces *actes, comportements, plans et entreprises* ont été mis en œuvre dans le cadre d'un programme systématique de génocide, visant à la destruction de nations et de groupes ethniques étrangers, en partie par l'élimination et la suppression de leurs caractéristiques nationales.

L'objectif de ce programme était de renforcer la nation allemande et la soi-disant race "aryenne" aux dépens de ces autres nations et groupes, en imposant des caractéristiques nazies et allemandes à des individus sélectionnés parmi eux [...], et en exterminant les éléments raciaux "indésirables".

Ce programme fut mis en œuvre notamment par :

- a) l'enlèvement d'enfants ;
- b) les avortements ;
- c) le retrait d'enfants aux travailleurs de l'Est ;
- d) des punitions pour rapports sexuels avec des Allemands. [...] »[5]

Le jugement cite, entre autres éléments de preuve, une lettre signée par Himmler le 18 juin 1941 :

« Je considérerais comme juste que les jeunes enfants de familles polonaises présentant des caractéristiques raciales particulièrement bonnes soient appréhendés et éduqués par nous dans des institutions et foyers pour enfants qui ne doivent pas être trop grands.

L'appréhension des enfants devrait être expliquée par un motif de santé menacée.

Après un semestre, l'arbre généalogique et les documents de filiation des enfants jugés acceptables devraient être établis.

Après un an au total, il conviendrait d'envisager de confier ces enfants comme enfants adoptifs à des familles sans enfants de bonne race. »[6]

Dans le cas d'une grossesse résultant d'un rapport sexuel entre un membre de la SS et une femme non allemande résidant dans les territoires occupés de l'Est, un avortement devait être pratiqué, à moins que la

femme ne soit évaluée comme étant « de bonne souche »[7]. Dans ce cas, l'enfant était retiré à la mère, envoyé en Allemagne et placé dans un foyer pour enfants étrangers ou donné en adoption à des « familles privées ».

Bien que l'accusation ait utilisé le terme « génocide » pour décrire ce plan, la **Loi n° 10 du Conseil de contrôle** du 20 décembre 1945 n'incluait pas encore ce crime, qui venait tout juste d'émerger conceptuellement grâce aux travaux de Lemkin. Les accusés reconnus coupables au titre du chef n° 1 furent donc condamnés pour **crimes contre l'humanité** et **crimes de guerre**.

Fort de cette expérience de la Seconde Guerre mondiale, la **Convention pour la prévention et la répression du crime de génocide** a été adoptée le 9 décembre 1948 par l'Assemblée générale et est entrée en vigueur le 12 janvier 1951[8]. L'article II de la Convention inclut notamment l'acte consistant à « **transférer de force des enfants du groupe à un autre groupe** », constitutif de génocide lorsqu'il est **commis avec l'intention de détruire, en tout ou en partie, un groupe national, ethnique, racial ou religieux, en tant que tel**.

2. Les crimes contre l'humanité après la Seconde Guerre mondiale

Les crimes contre l'humanité ont été intégrés dans les statuts des tribunaux ad hoc pour l'ex-Yougoslavie et pour le Rwanda, lesquels ont développé une jurisprudence abondante précisant la définition de leurs éléments constitutifs. Il est généralement admis que l'article 7 du Statut de Rome reprend ces éléments tels qu'ils se sont cristallisés en droit international coutumier :

« Aux fins du présent Statut, on entend par “crime contre l'humanité” l'un quelconque des actes ci-après lorsqu'il est commis dans le cadre d'une attaque généralisée ou systématique lancée contre toute population civile et en connaissance de cette attaque : [...] »

Le paragraphe 2-a de l'article 7 clarifie ce que l'on entend par « **attaque lancée contre toute population civile** », à savoir :

« un comportement qui consiste en la commission multiple des actes visés au paragraphe 1 contre toute population civile, en application ou dans la poursuite de la politique d'un État ou d'une organisation tendant à commettre une telle attaque. »

La jurisprudence du TPIY, du TPIR, de la CPI et de tribunaux hybrides tels que la Cour spéciale pour la Sierra Leone (SCSL) ou les Chambres extraordinaires au sein des tribunaux cambodgiens (CETC) a encore précisé la signification exacte des différentes notions contenues au paragraphe 1 de l'article 7.

L'article 7, paragraphe 1, énumère des actes spécifiques qui, lorsqu'ils sont commis dans le cadre d'une **attaque généralisée ou systématique contre toute population civile**, constituent des crimes contre l'humanité. Parmi ces actes spécifiques, plusieurs peuvent être applicables aux adoptions illégales, y compris les adoptions internationales :

- la **déportation ou le transfert forcé de population**,

- l'**emprisonnement** ou toute autre forme de **privation grave de liberté physique** en violation des règles fondamentales du droit international,
- la **persécution** de tout groupe ou de toute collectivité identifiable pour des motifs politiques, raciaux, nationaux, ethniques, culturels, religieux, sexistes au sens du paragraphe 3, ou pour d'autres motifs universellement reconnus comme inadmissibles en droit international, en lien avec tout acte visé au présent paragraphe ou tout crime relevant de la compétence de la Cour,
- la **disparition forcée de personnes**,
- d'**autres actes inhumains de caractère analogue**, causant intentionnellement de grandes souffrances ou des atteintes graves à l'intégrité physique ou mentale.

En outre, d'autres actes peuvent être applicables lorsqu'ils sont commis à l'égard d'enfants dans le contexte d'adoptions illégales, selon les circonstances de l'affaire, tels que :

- l'**esclavage**,
- la **torture**,
- le **viol**, l'**esclavage sexuel**, la **prostitution forcée**, la **grossesse forcée**, la **stérilisation forcée** ou toute autre forme de violence sexuelle de gravité comparable.

3. Les poursuites en Argentine

À ma connaissance — qui peut être imparfaite — les seuls cas où des adoptions illégales ont été poursuivies avec succès comme crimes contre l'humanité se sont produits en **Argentine**.

Dans ce pays, il convient de rappeler que la dictature militaire — en coordination avec d'autres pays de la région dans le cadre du "**Plan Condor**" — a mené, entre 1976 et 1983, une vaste campagne de disparitions forcées. On estime qu'environ **30 000 personnes** ont été victimes de disparition forcée, détenues dans des centres clandestins à travers tout le pays, souvent soumises à la torture et, dans de nombreux cas, exécutées.

Parmi les personnes disparues figuraient des **femmes enceintes**, contraintes d'accoucher en détention. Leurs bébés leur étaient ensuite enlevés de force et **adoptés illégalement**, sous une **identité falsifiée**, pour la plupart par des familles liées à la dictature. On estime qu'environ **400 enfants** ont ainsi été « appropriés ».

Les *Grand-mères de la Plaza de Mayo* recherchent ces enfants depuis cette époque et ont réussi à en identifier plus de **140**, mais la recherche se poursuit encore aujourd'hui. Plusieurs affaires ont été portées devant la justice en lien avec ces disparitions et ces adoptions illégales.

Parmi les affaires relatives au « **plan systématique d'appropriation de mineurs** »[9], l'affaire **Sampallo Barragán, Rivas et autres (au nom de Quintana) c. Pleé**, concernait l'« appropriation » du bébé de **Mirta Mabel Barragán et Leonardo Rubén Sampallo**.

Mirta était enceinte de six mois lorsqu'elle a été arrêtée. Son bébé a été approprié par un ancien capitaine de l'armée, qui l'a confiée à ses amis **Oswaldo Rivas et María Cristiana (Maria Cristina) Gómez Pinto**, au moyen d'un **faux certificat de naissance**.

Ci-dessous figurent des extraits du résumé de l'affaire présenté dans *Oxford Reports on International Law* :

F5 Le 4 avril 2008, le Tribunal oral fédéral n° 4 a condamné :

(a) **Rivas** à huit ans d'emprisonnement et huit ans de disqualification civile, en tant que coauteur de la falsification du contenu d'un document public et de l'enlèvement et de la dissimulation d'un mineur de moins de dix ans, ainsi que comme auteur de la falsification d'un document public destiné à attester l'identité de personnes ;

(b) **Pinto** à sept ans d'emprisonnement et sept ans de disqualification civile, en tant que coauteure de l'enlèvement et de la dissimulation d'un mineur de moins de dix ans ;

(c) **Berthier** comme complice de l'enlèvement et de la dissimulation d'un mineur de moins de dix ans.

Ils ont été acquittés d'autres charges.

F6 La défense a contesté les condamnations devant la Cour de cassation, demandant l'application de la prescription. Le ministère public et la partie civile ont également interjeté appel, contestant les acquittements et, par conséquent, les peines finalement imposées par la Cour de cassation.

La Cour de cassation a rendu son jugement le 8 septembre 2009 :

F8 Les juges de la Chambre IV ont décidé à l'unanimité de confirmer la décision du Tribunal oral fédéral n° 5 en ce qu'elle refusait d'appliquer la prescription.

Ils ont également décidé à l'unanimité que les crimes constituaient des **crimes contre l'humanité**, tels qu'analysés par le Tribunal oral fédéral, et ont partiellement annulé la condamnation.

Dans le cadre de leurs pouvoirs procéduraux, ils ont modifié les charges afin d'inclure le crime d'**altération de l'identité et de la filiation d'un mineur de moins de dix ans** dans la condamnation.

Les crimes d'élimination de l'identité et du statut parental, ainsi que de falsification de documents, ont été qualifiés de **crimes contre l'humanité**, car ils ont été jugés par la Cour comme **faisant partie de la mise en œuvre d'un plan visant à faire disparaître de force des personnes**.

4. Poursuites pour déportation et transfert forcé d'enfants en tant que crimes de guerre devant la CPI

Même si la Cour pénale internationale n'a pas encore traité la question des adoptions illégales sous l'angle des crimes contre l'humanité, il est néanmoins important de noter que, le 24 juin 2024, la Chambre préliminaire II de la CPI a délivré des mandats d'arrêt contre Vladimir Poutine, président de la Fédération de Russie, et Maria Alekseyevna Lvova-Belova, commissaire aux droits de l'enfant, les déclarant :

« *présumés responsables du crime de guerre de déportation illégale de population (enfants) et du transfert illégal de population (enfants) depuis des zones occupées d’Ukraine vers la Fédération de Russie (en vertu des articles 8(2)(a)(vii) et 8(2)(b)(viii) du Statut de Rome).* »[10]

Ces charges concernent la déportation forcée vers la Russie ou le transfert forcé (dans les territoires occupés en Ukraine) d’enfants ukrainiens par les autorités russes dans divers contextes. Certains enfants auraient été retirés d’orphelinats et placés en familles d’accueil en Russie. D’autres auraient été enlevés à leurs parents ou pris en charge après la mort de ceux-ci, et certains auraient pu être adoptés par des familles russes.

L’ampleur exacte du phénomène, ainsi que le nombre d’adoptions qui en ont résulté, restent incertains, mais des cas ont été documentés, notamment par le Haut-Commissariat des Nations Unies aux droits de l’homme (HCDH)[11]. L’Ukraine a lancé un projet spécifique intitulé **“Bring Kids Back”**, affirmant qu’environ **19 546** enfants auraient été déportés ou transférés, tandis que **1 819** auraient été rapatriés[12].

Même si, dans cette affaire, la question est traitée sous la qualification de crimes de guerre, il convient de rappeler que les crimes de déportation et de transfert forcé figurent également parmi les crimes contre l’humanité énumérés à l’article 7 du Statut de la CPI.

B. Disparitions forcées

Les disparitions forcées ont été définies dans plusieurs instruments internationaux et sont aujourd’hui reconnues comme un crime relevant du droit international coutumier ainsi qu’une norme de *jus cogens* (voir ci-dessous pour ces aspects).

La Convention interaméricaine de 1994 fournit, dans son article II, la définition suivante de la disparition forcée :

« Aux fins de la présente Convention, la disparition forcée est considérée comme l’acte de priver une personne ou des personnes de leur liberté, de quelque manière que ce soit, perpétré par des agents de l’État ou par des personnes ou des groupes de personnes agissant avec l’autorisation, l’appui ou l’acquiescement de l’État, suivi d’une absence d’information ou d’un refus de reconnaître cette privation de liberté ou de donner des informations sur le sort ou la localisation de cette personne, empêchant ainsi le recours aux voies de droit et aux garanties procédurales applicables. »

Le sixième paragraphe du préambule réaffirme que « la pratique systématique de la disparition forcée de personnes constitue un crime contre l’humanité ».

La Convention internationale pour la protection de toutes les personnes contre les disparitions forcées de 2006 (ci-après ICPPED)[13] donne, dans son article 2, la définition suivante :

« Aux fins de la présente Convention, on entend par “disparition forcée” l’arrestation, la détention, l’enlèvement ou toute autre forme de privation de liberté par des agents de l’État, ou par des personnes ou groupes de personnes agissant avec l’autorisation, l’appui ou l’acquiescement de l’État, suivis du refus de reconnaître ladite privation de liberté ou de la dissimulation du sort ou du lieu où se trouve la personne disparue, la soustrayant ainsi à la protection de la loi. »

Selon l'article 3, la Convention crée également l'obligation pour les États parties de « prendre les mesures appropriées pour enquêter sur les actes définis à l'article 2 commis par des personnes ou groupes de personnes agissant sans l'autorisation, l'appui ou l'acquiescement de l'État, et pour traduire les responsables en justice. »

L'article 4 impose aux États parties de « prendre les mesures nécessaires pour que la disparition forcée constitue une infraction dans leur droit pénal ». Cette obligation a généralement été interprétée par le Comité comme la nécessité d'adopter une législation intégrant un crime « autonome » (c'est-à-dire sans lien avec une autre catégorie de crimes tels que les crimes contre l'humanité), reflétant l'ensemble des éléments de l'infraction énumérés à l'article 2. Cette obligation pourrait également, à mon sens, être satisfaite par la reconnaissance et l'application de ce crime en tant que norme coutumière internationale par une juridiction – étant donné qu'il est aujourd'hui largement admis que la définition de l'article 2 reflète le droit international coutumier.

Il est également important de noter que les États parties ont l'obligation, en vertu de l'article 7, de « rendre l'infraction de disparition forcée passible de peines appropriées tenant compte de sa gravité extrême », et que des circonstances aggravantes doivent notamment être établies en cas de disparition forcée d'une personne mineure.

Le paragraphe 5 du préambule de la Convention rappelle « la gravité extrême de la disparition forcée, qui constitue un crime et, dans certaines circonstances définies par le droit international, un crime contre l'humanité », tandis que l'article 5 de la Convention précise :

« La pratique généralisée ou systématique de la disparition forcée constitue un crime contre l'humanité tel que défini par le droit international applicable et entraîne les conséquences prévues par ce droit. »

La disparition forcée comme crime contre l'humanité est définie plus précisément à l'article 7, paragraphe 2-i, du Statut de Rome de la Cour pénale internationale[14] :

« On entend par “disparition forcée de personnes” l'arrestation, la détention ou l'enlèvement de personnes par un État ou une organisation politique ou avec leur autorisation, leur appui ou leur acquiescement, suivis du refus de reconnaître la privation de liberté ou de donner des informations sur le sort ou la localisation de ces personnes, dans l'intention de les soustraire à la protection de la loi pendant une période prolongée. »

Sur la base de ces définitions, il apparaît que de nombreux cas d'adoption illégale – y compris l'adoption internationale – constituent des disparitions forcées, soit en tant que crime « autonome » au sens de la Convention, soit en tant que crime contre l'humanité, dès lors que les éléments contextuels sont également réunis (à savoir que la disparition forcée a eu lieu dans le cadre d'une attaque généralisée ou systématique dirigée contre une population civile et en lien avec celle-ci, et que l'auteur en avait connaissance).

Dans l'affaire **Gelman c. Uruguay** devant la Cour interaméricaine des droits de l'homme[15], María Claudia García Iruretagoyena de Gelman fut victime d'une disparition forcée à Buenos Aires alors qu'elle était enceinte de plusieurs mois. Il est présumé qu'elle fut ensuite transférée en Uruguay, où elle accoucha de sa fille, qui fut ensuite remise à une famille uruguayenne.

Concernant la situation de la fille, María Macarena Gelman García, qui retrouva par la suite sa véritable identité, la Cour déclara :

« 132. Eu égard à ce qui précède, l'enlèvement et la suppression de l'identité de María Macarena Gelman García, conséquence de la détention et du transfert ultérieur de sa mère enceinte vers un autre État, peuvent être qualifiés de forme particulière de disparition forcée de personnes, en raison du même objectif ou du même effet [...]. »

Selon un schéma similaire, **Liliana Clelia Fontana Deharbe**, enlevée le 1er juillet 1977 alors qu'elle était enceinte de deux mois et demi, donna naissance à son fils Pedro Sandoval Fontana pendant sa disparition. Un tribunal argentin condamna **Víctor Enrique Rei**, le père adoptif de l'enfant volé, reconnaissant que les faits dont il était accusé constituaient une disparition forcée :

« En résumé, nous considérons que les actes reprochés à Víctor Enrique Rei constituent une disparition forcée de personnes, puisque la dissimulation et la rétention d'Alejandro Adrián, préalablement arraché à sa mère biologique, n'ont pu être maintenues que par la suppression et la substitution ultérieure de son état civil au moyen de diverses falsifications idéologiques de documents publics, et ces formes concomitantes de commission ne sauraient être considérées, en l'espèce, comme dissociées de cet enlèvement initial. »[16]

Les adoptions illégales, y compris les adoptions internationales, surviennent dans divers contextes. L'application de la définition des disparitions forcées doit donc être examinée au cas par cas. Il est néanmoins possible de la confronter à certains schémas typiques et bien documentés d'enlèvements et d'adoptions illégales d'enfants.

Il n'existe pas de difficulté apparente à l'appliquer aux schémas liés ou proches de la répression politique, de la criminalité de masse ou des crimes de guerre, tels que les adoptions illégales survenues en Argentine, ou les adoptions illégales menées dans le cadre d'attaques contre certaines composantes de la population.

Par exemple, dans l'affaire **Contreras et autres c. Salvador**, la Cour interaméricaine examina l'enlèvement d'enfants dans le cadre de la stratégie de contre-insurrection développée au Salvador. La Cour conclut que, « selon cette stratégie, il était jugé utile d'enlever des enfants afin de les séparer de la « population ennemie » et de les éduquer selon l'idéologie de l'État de l'époque. Les enfants étaient enlevés lors d'opérations militaires après que des membres de leur famille eurent été exécutés ou forcés de fuir pour sauver leur vie, et ils étaient souvent appropriés par des chefs militaires qui les intégraient à leur propre famille comme leurs enfants [...]. »[17]

La Cour poursuivit :

« D'anciens soldats ont témoigné qu'à partir de 1982, ils reçurent l'ordre de prendre tout enfant trouvé lors d'une attaque contre des positions ennemies. Outre la séparation des enfants de leur famille dans le cadre de la stratégie contre-insurrectionnelle, d'autres motivations existaient, notamment l'objectif de donner les enfants à l'adoption.

Selon les éléments recueillis, les destinations possibles des enfants après leur séparation de leur famille et leur disparition se répartissaient comme suit :

[...] des adoptions via une procédure formelle au sein du système judiciaire, la majorité des enfants étant confiés à des familles étrangères, principalement aux États-Unis, en France et en Italie [...]. »[18]

Dans l'affaire **Contreras**, la Cour conclut que les enfants enlevés et appropriés étaient victimes de disparitions forcées. Dans le cas particulier d'Herminia Contreras, « retrouvée en 2006, sa situation doit également être qualifiée de disparition forcée, laquelle a pris fin lorsque son identité a été rétablie. »[19]

Au-delà de ces cas communément associés aux disparitions forcées, ce crime peut également, à mon sens, s'appliquer à des schémas souvent associés à la criminalité ordinaire ou à la "traite".

Prenons, par exemple, un schéma très courant : l'enlèvement de nouveau-nés à la maternité. Après la naissance, le bébé est retiré à la mère sous prétexte d'examens ou de soins ; un peu plus tard, le personnel revient pour annoncer que l'enfant est décédé. En réalité, le bébé est transféré dans un orphelinat ou un lieu secret, puis donné ou vendu à une famille adoptive sous une fausse identité grâce à un acte de naissance falsifié. L'opération peut être menée directement par des agents publics ou par des acteurs privés tels que des agences d'adoption ou des réseaux de traite, mais très souvent avec la complicité des autorités de l'État ou au moins leur acquiescement tacite.

Dans un tel cas, à mon avis, tous les éléments constitutifs de la disparition forcée sont réunis :

- **élément 1** : « toute forme de privation de liberté », ici l'enlèvement du nouveau-né ;
- **élément 2** : « par des agents de l'État ou par des personnes ou groupes de personnes agissant avec l'autorisation, l'appui ou l'acquiescement de l'État », c'est-à-dire soit les agents publics, soit des acteurs privés bénéficiant de la complicité passive ou active des autorités ;
- **élément 2bis** (applicable uniquement au crime contre l'humanité) : « par un État ou une organisation politique, ou avec leur autorisation, leur appui ou leur acquiescement » – ce qui inclut certains acteurs non étatiques organisés (groupes armés, quasi-États) ;
- **élément 3** : « refus de reconnaître la privation de liberté ou dissimulation du sort ou du lieu où se trouve la personne disparue » : dans le cas de l'adoption illégale, cet élément est constitué par l'annonce officielle faite à la mère que le bébé est mort et par la falsification d'identité qui garantit qu'il ne pourra jamais être retrouvé ;
- **élément 4** : « soustraction de la personne à la protection de la loi », c'est-à-dire l'impossibilité d'exercer des recours juridiques contre l'enlèvement et la disparition, ainsi que contre les violations des droits humains qui en découlent (droit à l'identité, droit à la protection de la famille). La suppression de la personnalité juridique empêche en pratique toute voie de recours. La mère et la famille se trouvent elles aussi dans un vide juridique total, sans défense[20] ;
- **élément 4bis** (applicable uniquement au crime contre l'humanité[21]) : « intention de soustraire la personne à la protection de la loi pour une période prolongée », condition remplie lorsque l'auteur – ou la chaîne d'auteurs – entend occulter l'enfant, falsifier son identité et l'effacer comme personne possédant une identité et une histoire familiale originelles.

D'autres schémas peuvent être analysés de manière similaire : une famille qui confie son enfant à un centre d'accueil et découvre un jour qu'il a "disparu" ; une mère célibataire poussée à consentir à une adoption sous la promesse mensongère qu'elle pourra maintenir un contact, et qui ne revoit jamais

l'enfant ; une famille persuadée frauduleusement de confier temporairement son enfant à une association en échange d'un séjour chez une famille étrangère, l'enfant ne revenant jamais, etc.

C. Crimes spécifiques : enlèvement illégal d'enfants, falsification, dissimulation ou destruction de documents

L'article 25 de l'ICPPED impose des obligations supplémentaires aux États parties, y compris sur le plan pénal, comme indiqué aux paragraphes 1 et 2 :

- « 1. Chaque État partie prend les mesures nécessaires pour prévenir et punir en vertu de son droit pénal :
- (a) L'enlèvement illégal d'enfants soumis à une disparition forcée, d'enfants dont le père, la mère ou le tuteur légal est soumis à une disparition forcée, ou d'enfants nés pendant la captivité d'une mère soumise à une disparition forcée ;
 - (b) La falsification, la dissimulation ou la destruction de documents attestant de la véritable identité des enfants visés au sous-alinéa (a) ci-dessus. »

Le Comité sur les disparitions forcées encourage généralement les États parties à examiner leur législation pénale afin d'y intégrer ces infractions spécifiques. Ces infractions ne constituent pas une *lex specialis* par rapport aux disparitions forcées, comme le montre clairement le libellé du point (a) : « l'enlèvement illégal d'enfants soumis à une disparition forcée [...] ».

En d'autres termes, la disparition forcée d'un enfant, l'enlèvement illégal d'un enfant et la falsification, la dissimulation ou la destruction de documents attestant de la véritable identité de l'enfant peuvent donner lieu à des condamnations cumulatives dans une même affaire. L'enlèvement d'un enfant suivi de la dissimulation de son sort ou de sa localisation, plaçant cet enfant en dehors de la protection de la loi, constitue une disparition forcée. Dans certains cas, l'enquête peut aboutir à la conclusion que la disparition forcée a conduit à la falsification de l'identité et à l'enlèvement illégal par adoption, ce qui constitue alors des infractions supplémentaires.

II. L'obligation de poursuivre les adoptions illégales en droit international

Les États ont l'obligation de poursuivre les adoptions illégales en vertu du droit international coutumier ainsi que des traités. Cette obligation découle à la fois des traités et du droit international coutumier.

Dans son Commentaire général n°31[22], le Comité des droits de l'homme de l'ONU, gardien du Pacte international relatif aux droits civils et politiques[23], souligne l'obligation des États, dans le cadre du droit à un recours effectif, de veiller à ce que les personnes responsables de violations graves, y compris les disparitions forcées, soient traduites en justice :

- « 18. Lorsque les enquêtes mentionnées au paragraphe 15 révèlent des violations de certains droits du Pacte, les États parties doivent veiller à ce que les responsables soient traduits en justice. Tout comme le manquement à enquêter, le défaut de traduire en justice les auteurs de telles violations peut, en soi, constituer une violation distincte du Pacte. Ces obligations concernent notamment les violations reconnues comme criminelles en droit interne ou international, telles que la torture et les traitements

cruels, inhumains ou dégradants similaires (article 7), les exécutions sommaires et arbitraires (article 6) et la disparition forcée (articles 7 et 9 et, fréquemment, 6). En effet, le problème de l'impunité pour ces violations, qui préoccupe fortement le Comité, peut constituer un facteur important dans la récurrence de ces violations. Lorsqu'elles sont commises dans le cadre d'une attaque généralisée ou systématique contre une population civile, ces violations du Pacte constituent des crimes contre l'humanité (voir Statut de Rome de la Cour pénale internationale, article 7). »

Des obligations spécifiques d'enquête et de poursuite se retrouvent dans d'autres conventions relatives aux droits de l'homme. La Convention contre la torture prévoit plusieurs dispositions concernant l'obligation pour les États parties d'établir leur compétence en matière de torture (art. 5), y compris pour des actes commis en dehors du territoire de l'État (« compétence extraterritoriale »), de mener une enquête préliminaire, de placer le suspect en détention (art. 6) et soit de juger soit d'extrader le présumé auteur (principe *aut dedere, aut judicare*, art. 7). Des dispositions similaires existent dans l'ICPPED (arts. 9-11).

De plus, l'article 12, paragraphe 1, de l'ICPPED impose aux États parties l'obligation de « veiller à ce que toute personne alléguant qu'une personne a été victime d'une disparition forcée ait le droit de signaler les faits aux autorités compétentes, lesquelles doivent examiner l'allégation rapidement et impartialement et, le cas échéant, entreprendre sans délai une enquête approfondie et impartiale. » Cette obligation d'enquête existe même s'il n'y a pas eu de plainte formelle « lorsqu'il existe des motifs raisonnables de croire qu'une personne a été soumise à une disparition forcée » (art. 12, par. 2 ICPPED). Le paragraphe 3 du même article précise les conditions spécifiques concernant les « autorités » chargées de l'enquête.

L'obligation des États d'enquêter et de poursuivre s'accompagne du droit de « chaque victime ... de connaître la vérité sur les circonstances de la disparition forcée, sur le déroulement et les résultats de l'enquête ainsi que sur le sort de la personne disparue » (art. 24, par. 2 ICPPED). Le droit à la vérité implique également que les États « prennent toutes les mesures appropriées pour rechercher, localiser et libérer la personne disparue et, en cas de décès, pour localiser, respecter et restituer ses restes » (art. 24, par. 3 ICPPED).

Les Conventions de Genève obligent les États à enquêter sur les crimes de guerre, à poursuivre et à juger ou extradier les responsables (Première Convention de Genève, art. 49 ; Deuxième Convention de Genève, art. 50 ; Troisième Convention de Genève, art. 129 ; Quatrième Convention de Genève, art. 146). Cette règle fait également partie du droit international coutumier[24].

Une obligation similaire existe pour le génocide, sur la base de la Convention de 1948 (articles IV et VI) et du droit international coutumier.

En ce qui concerne les crimes contre l'humanité, la Commission du droit international a adopté en 2019 les « projets d'articles sur la prévention et la répression des crimes contre l'humanité » afin de codifier le droit international coutumier sur la question[25]. Dans le préambule, la Commission reconnaît que l'interdiction des crimes contre l'humanité est une norme impérative du droit international général (*jus cogens*) et que « il est du devoir de tout État d'exercer sa compétence pénale à l'égard des crimes contre l'humanité ». Les articles 7 à 10 du projet contiennent des dispositions similaires à celles de la

Convention contre la torture et de l'ICPPED sur les obligations des États d'enquêter, de prendre des mesures préliminaires, de juger ou d'extrader un auteur présumé.

Au-delà des instruments internationaux, de nombreux tribunaux et comités des droits de l'homme ont réaffirmé l'obligation des États d'enquêter et de poursuivre les violations graves des droits de l'homme, telles que les crimes contre l'humanité et les disparitions forcées. Par exemple, dans l'affaire Gelman (déjà citée ci-dessus), la Cour interaméricaine souligne le rôle central du droit d'enquête et sa relation avec le droit à la vérité des victimes :

« 183. Cette Cour a souligné l'importance du devoir de l'État d'enquêter et de punir les violations des droits de l'homme ; l'obligation d'enquêter et, le cas échéant, de poursuivre et de punir est particulièrement importante compte tenu de la gravité des crimes commis et de la nature des droits violés, notamment parce que l'interdiction de la disparition forcée et l'obligation correspondante d'enquêter et de punir les responsables ont atteint le statut de *jus cogens*.

[...]

185. En ce qui concerne la disparition forcée et étant donné que l'un de ses objectifs est d'empêcher l'exercice des recours et garanties procédurales appropriés, si la victime elle-même ne peut accéder aux recours disponibles, il est fondamental que les proches ou toute personne proche de la victime puissent accéder rapidement et efficacement aux procédures ou recours judiciaires afin de déterminer son sort, son état de santé ou d'identifier l'autorité ayant ordonné ou exécuté la privation de liberté.

186. Plus précisément, chaque fois qu'il existe des motifs de soupçonner qu'une personne a subi une disparition forcée, une enquête doit être ouverte. Cette obligation existe indépendamment du dépôt d'une plainte, car, en matière de disparition forcée, le droit international et le devoir général de garantie imposent l'obligation d'enquêter *ex officio*, sans délai et de manière sérieuse, impartiale et efficace. Cette enquête doit être menée par tous les moyens légaux disponibles et viser à établir la vérité. Il s'agit d'un élément fondamental et conditionnant la protection de certains droits affectés par ces situations, incluant, en tout état de cause, toutes les autorités étatiques, les fonctionnaires publics ou les individus ayant connaissance d'actes relatifs à la disparition forcée de personnes, lesquels doivent les dénoncer immédiatement.

[...]

192. La satisfaction de la dimension collective du droit à la vérité nécessite la détermination procédurale du dossier historique le plus complet possible. Cette détermination doit inclure une description des schémas d'action concertée et identifier toutes les personnes ayant participé de diverses manières aux violations et leurs responsabilités correspondantes. »[26]

Dans l'affaire Goiburú et autres, la Cour a établi que l'interdiction des disparitions forcées et l'obligation correspondante d'enquêter et de punir les auteurs ont atteint le statut de *jus cogens* – c'est-à-dire une norme impérative du droit international[27].

Enfin, dans l'affaire Contreras et autres, la Cour a précisé que la création d'institutions telles que les commissions de vérité « ne remplit pas et ne se substitue pas à l'obligation de l'État d'établir la vérité par le biais de procédures judiciaires »[28].

III. Obstacles possibles à la poursuite des adoptions illégales

Quels sont les obstacles qui pourraient être invoqués pour empêcher la poursuite des adoptions illégales ? Dans son Commentaire général n°31, le Comité des droits de l'homme a abordé plusieurs d'entre eux, tels que les amnisties, les grâces et autres excuses pouvant exonérer les responsables de leur responsabilité :

« [Lorsque des agents publics ou des fonctionnaires d'État ont commis des violations des droits du Pacte mentionnées dans ce paragraphe, les États parties concernés ne peuvent pas exonérer les auteurs de leur responsabilité personnelle, comme cela s'est produit avec certaines amnisties (voir Commentaire général n°20 (44)) et certaines immunités et indemnités légales antérieures. En outre, aucun statut officiel ne justifie qu'une personne susceptible d'être accusée de responsabilité pour de telles violations soit tenue à l'immunité. D'autres obstacles à l'établissement de la responsabilité juridique doivent également être supprimés, tels que la défense fondée sur l'obéissance à des ordres supérieurs ou des délais de prescription déraisonnablement courts dans les cas où ces délais s'appliquent. Les États parties devraient également s'entraider pour traduire en justice les personnes suspectées d'avoir commis des actes violant le Pacte et punissables en vertu du droit interne ou international. »

Je traiterai ici plus spécifiquement de deux questions souvent invoquées dans les cas d'enlèvements et d'adoptions illégales : le principe de non-rétroactivité des infractions pénales et la prescription.

Aucun de ces arguments ne peut être invoqué pour empêcher la poursuite des auteurs d'adoptions illégales impliquant le « retrait illégal » et la falsification de l'identité d'un enfant. La raison en est que, quel que soit le crime spécifique utilisé comme base légale de la poursuite, une telle adoption illégale constitue un acte continu, avec deux conséquences majeures :

- a) si une prescription existe, elle ne commence qu'au moment où le crime cesse, c'est-à-dire lorsque l'enfant – devenu adulte – retrouve sa véritable identité ;
- b) de même, la loi applicable à l'adoption illégale est celle en vigueur lorsque le crime cesse, c'est-à-dire lorsque la personne retrouve son identité réelle.

Dans son Commentaire général sur les disparitions forcées en tant que crime continu, le Groupe de travail de l'ONU sur les disparitions forcées a indiqué que :

« [L]es disparitions forcées sont des actes continus typiques. L'acte commence au moment de l'enlèvement et se prolonge tant que le crime n'est pas achevé, c'est-à-dire jusqu'à ce que l'État reconnaisse la détention ou communique des informations sur le sort ou le lieu de la personne. [...] Une disparition forcée constitue un acte unique et consolidé, et non une combinaison d'actes. Même si certains aspects de la violation ont été réalisés avant l'entrée en vigueur de l'instrument national ou international pertinent, si d'autres parties de la violation se poursuivent encore, jusqu'au moment où le sort ou le lieu de la victime est établi, l'affaire doit être examinée dans son ensemble, et ne doit pas être fragmentée. »[29]

Le Groupe de travail en a déduit les conséquences nécessaires de cette continuité sur le plan pénal :

« [E]n droit pénal, le Groupe de travail estime qu'une conséquence du caractère continu de la disparition forcée est qu'il est possible de condamner une personne pour disparition forcée sur la base d'un instrument légal promulgué après le début de la disparition, nonobstant le principe fondamental de

non-rétroactivité. Le crime ne peut être scindé, et la condamnation doit couvrir la disparition forcée dans son ensemble. »

L'article 8 de l'ICPPED fixe des règles relatives à la prescription pour le crime de disparition forcée, en tenant compte de son caractère continu :

Sans préjudice de l'article 5 [disparition forcée en tant que crime contre l'humanité, imprescriptible],

1. Un État partie qui applique une prescription pour la disparition forcée doit prendre les mesures nécessaires afin que le délai de prescription pour les poursuites pénales :
 - (a) soit long et proportionné à la gravité extrême de cette infraction ;
 - (b) commence à partir du moment où l'infraction de disparition forcée cesse, en tenant compte de son caractère continu.
2. Chaque État partie doit garantir le droit des victimes de disparition forcée à un recours effectif pendant le délai de prescription.

La déclaration conjointe de l'ONU sur les adoptions internationales illégales de 2022 rappelle que « les États doivent interdire les adoptions internationales illégales en tant qu'infraction continue en droit pénal » et « veiller à ce que les délais de prescription ne constituent pas un obstacle pour les victimes souhaitant accéder à des recours judiciaires, compte tenu des difficultés particulières des enfants victimes pour déposer plainte et du caractère continu de l'infraction ».[30]

Dans l'affaire **Radilla-Pacheco c. Mexique**[31], la Cour interaméricaine a rejeté l'argument de l'État fondé sur le principe de non-rétroactivité :

« 240. Pour ce Tribunal, l'argument de l'État selon lequel il existerait un « obstacle insurmontable » à l'application de la définition pénale de la disparition forcée au Mexique, en raison du départ à la retraite du responsable présumé avant l'entrée en vigueur de la loi, est irrecevable. La Cour considère que tant que le sort ou le lieu de la victime n'a pas été établi, la disparition forcée reste invariable, indépendamment de la modification du statut de « fonctionnaire public » de l'auteur. Dans les cas comme le présent, où la victime est disparue depuis 35 ans, il est raisonnable de supposer que la caractéristique requise pour le sujet actif peut varier dans le temps. Ainsi, accepter l'argument de l'État favoriserait l'impunité.

241. Au vu de ce qui précède, cette Cour considère que, conformément au principe *nullum crimen nulla poena sine lege praevia*, la figure de la disparition forcée constitue la qualification légale applicable aux faits de la présente affaire. »

La Cour interaméricaine a cité plusieurs précédents de cours suprêmes ou constitutionnelles du continent, en particulier l'affaire **Villegas Namuche** devant la Cour constitutionnelle du Pérou, où il a été jugé :

« Enfin, bien que le crime de disparition forcée n'ait pas été en vigueur dans notre Code pénal au moment de la détention présumée de Genaro Villegas Namuche, cela ne constitue pas un obstacle à l'engagement du processus pénal correspondant et à la sanction des responsables des autres crimes impliqués dans les événements.

En tout état de cause, bien que le principe de légalité pénale, reconnu à l'article 2.24,d de la Constitution,

inclue la garantie de la *Lex previa*, selon laquelle la norme prohibitive doit être antérieure à l'acte criminel, dans le cas de crimes de nature permanente, la loi pénale applicable ne sera pas nécessairement celle en vigueur au moment de la commission du crime.

Le principe de loi préalable garantit que, au moment de la commission du crime, une loi pénale établissant une peine spécifique doit être en vigueur. Ainsi, dans le cas de crimes instantanés, la loi pénale applicable sera toujours antérieure à l'acte criminel. En revanche, pour les crimes continus, de nouvelles lois pénales peuvent surgir, applicables à ceux qui commettent le crime à ce moment, sans que cela implique une application rétroactive.

Tel est le cas du crime de disparition forcée, qui, selon l'article III de la Convention interaméricaine sur les disparitions forcées, doit être considéré comme un crime continu jusqu'à ce que le sort ou le lieu de la victime soit établi. »[32]

Dans l'affaire argentine du « plan systématique d'enlèvement de bébés I »[33], le tribunal de première instance a conclu :

« La loi applicable à chaque affaire doit être déterminée en fonction de la loi en vigueur à la date où la commission du crime a cessé, fixée spécifiquement comme la date de publication des résultats de l'expertise devant le tribunal, lorsque cela a eu lieu. Pour les cas où la cessation n'a pas eu lieu, la loi applicable est celle de la date du jugement établissant l'enlèvement, la rétention et/ou la dissimulation d'un enfant de moins de 10 ans. »

Dans l'affaire **Juan Manuel Contreras Sepúlveda**, la Cour suprême du Chili a confirmé la décision de la Cour d'appel de ne pas appliquer la loi d'amnistie à un enlèvement survenu le 7 janvier 1975, bien que cette loi couvre presque tous les crimes commis entre 1973 et 1978. La condamnation était fondée sur le crime d'« enlèvement » prévu à l'article 141 du Code pénal, la Cour reconnaissant le caractère continu du crime, supposé s'étendre au-delà du délai fixé par la loi d'amnistie[34].

La Cour européenne des droits de l'homme – bien que non dans un cas de disparition forcée – a adopté une position similaire, en considérant conforme à l'article 7, paragraphe 1, de la Convention européenne des droits de l'homme, la condamnation du requérant pour « maltraitance d'une personne vivant sous le même toit », introduite dans le Code pénal en 2004, pour un comportement ayant duré de 2000 à 2006[35].

En matière de prescription, la Cour de cassation française, dans la demande d'extradition par l'Argentine de Mario Sandoval[36], a jugé qu'elle ne s'applique pas à une « détention ou emprisonnement arbitraire » commencée en 1976 mais se poursuivant après la fin de la dictature militaire en 1983 : « dans cette situation, le délai de prescription pour l'emprisonnement dont il a été victime n'a pas commencé à courir, l'infraction n'ayant pas pris fin ».

En conclusion, ni le principe de non-rétroactivité ni la prescription ne peuvent légalement empêcher les poursuites d'enlèvements suivis d'adoptions illégales, car il s'agit d'actes continus jusqu'à la rétablissement officiel de l'identité de l'enfant. Les poursuites peuvent se fonder sur le crime de disparition forcée si celui-ci est présent dans le code pénal, même ex post facto, c'est-à-dire pour des actes antérieurs à l'adoption de la loi. Elles peuvent également se fonder sur d'autres crimes pertinents tels que

détention arbitraire, enlèvement, dissimulation, falsification de documents, etc., qui doivent alors être compris non comme des crimes instantanés mais comme des crimes continus. Si une prescription est associée à ces crimes, elle ne commence à courir que lorsque le crime cesse, c'est-à-dire lorsque l'identité de l'enfant est rétablie.

De plus, le principe de non-rétroactivité et la prescription sont également neutralisés si les enlèvements d'enfants et les adoptions illégales sont poursuivis en tant que crimes contre l'humanité, c'est-à-dire lorsqu'ils s'inscrivent dans le cadre d'une attaque généralisée ou systématique contre une population civile, avec la connaissance de l'auteur. Cela s'explique par le fait que :

- a) Le génocide, les crimes contre l'humanité et les crimes de guerre peuvent être poursuivis sur la base d'une loi *ex post facto*, car ils étaient déjà reconnus comme crimes en droit international au moins depuis les années 1950 ;
- b) Ces crimes graves en droit international sont imprescriptibles.

En ce qui concerne les crimes commis pendant la Seconde Guerre mondiale, la Cour de cassation française, dans l'affaire **Klaus Barbie**, a jugé que la loi du 26 décembre 1964 ne faisait que « confirmer » les crimes contre l'humanité et le principe de leur imprescriptibilité, déjà établi en droit international.

Plus généralement, la Cour européenne des droits de l'homme a établi que le principe de non-rétroactivité prévu à l'article 7, paragraphe 1, de la Convention européenne ne fait pas obstacle à la condamnation d'un auteur sur la base d'une loi pénalisant de graves crimes au regard du droit international général adoptée après la commission des actes. Dans l'affaire **Boban Šimšić c. Bosnie-Herzégovine**[37], la Cour a déclaré :

« [S]a fonction en vertu de l'article 7 §1 est de vérifier si les actes du requérant, au moment où ils ont été commis, constituaient une infraction définie avec une accessibilité et une prévisibilité suffisantes par le droit interne ou international. »

Dans cette affaire, le requérant a été condamné en 2007 pour persécution en tant que crime contre l'humanité pour des actes commis en 1992. La Cour n'a cependant constaté aucune violation de l'article 7, paragraphe 1, de la Convention :

« Bien que les actes contestés n'aient pas constitué un crime contre l'humanité en droit interne avant l'entrée en vigueur du Code pénal de 2003, il ressort des documents cités aux paragraphes 8-13 ci-dessus que les actes contestés constituaient, au moment où ils ont été commis, un crime contre l'humanité en droit international. »

Concernant la prescription, les crimes graves tels que le génocide et les crimes contre l'humanité sont généralement reconnus comme imprescriptibles. Il s'agit d'une règle de droit international coutumier reflétée dans divers traités et statuts, y compris l'article 29 du Statut de Rome de la Cour pénale internationale[38]. Comme l'a observé la Commission du droit international dans le commentaire à l'article 6 de son projet d'articles sur les crimes contre l'humanité :

« À l’heure actuelle, il ne semble exister aucun État dont la législation sur les crimes contre l’humanité prévoit également un délai de prescription. Au contraire, de nombreux États ont expressément légiféré contre toute limitation de ce type. »[39]

*Cet article est un document de travail en cours et il est susceptible d’être modifié. Par ailleurs, veuillez noter que la version coréenne de cet article a été traduite de l’anglais avec l’aide d’une IA, et qu’elle peut comporter de légères inexactitudes.

** Les opinions exprimées dans ce document sont personnelles et ne reflètent pas nécessairement la position du Comité sur les Disparitions Forcées ni celle des Nations Unies.

Intervenant.e.s

Président de séance Sang Su HUH, Ancien commissaire, Commission vérité et réconciliation de Corée du Sud

1. Wan Ik JANG, Avocat, Cabinet d'avocat.e.s Haemaru
2. Ministère de la Santé et des Affaires sociales
3. Police

Document de discussion



Wan Ik JANG, Avocat, Cabinet d'avocat.e.s Haemaru

« La reconnaissance des faits et la charge de la preuve » est un problème commun à toutes les commissions d'enquête, y compris la Commission Vérité et Réconciliation (ci-après « la Commission »).

1. C'est pourquoi, lorsqu'elles entament leurs travaux d'enquête, les commissions établissent leurs propres critères. La plupart d'entre elles doivent rendre leurs décisions sur la base des documents qu'elles peuvent réunir et des témoignages qu'elles peuvent obtenir. Les critères qu'elles définissent jouent alors un rôle décisif, et les décisions rendues sur cette base sont généralement reconnues par les tribunaux.
2. Cependant, lorsque la commission établit ses critères en anticipant le jugement éventuel d'un tribunal, elle a tendance à adopter la stricte charge de la preuve exigée par les juridictions.
3. En réalité, certaines décisions de révélation de la vérité prises par la première Commission ont été rejetées par les tribunaux, entraînant le rejet des demandes.
4. Je présenterai ici un cas dans lequel la charge de la preuve a été inversée grâce à une présomption légale.
5. L'article 2, alinéa 2, de la Loi spéciale sur la restitution à l'État des biens des collaborateurs pro-japonais définit les « biens des collaborateurs pro-japonais » comme les biens acquis ou hérités par un collaborateur pro-japonais en contrepartie de sa coopération avec l'impérialisme japonais, depuis le début de la guerre russo-japonaise jusqu'au 15 août 1945, ou les biens légués ou donnés en connaissance de leur nature pro-japonaise. La loi ajoute que tout bien acquis par un collaborateur pro-japonais durant cette période est présumé avoir été obtenu en contrepartie d'actes de collaboration.
6. Dans une requête en inconstitutionnalité portant sur cette disposition, la Cour constitutionnelle a jugé la loi conforme à la Constitution, déclarant : « Il est extrêmement difficile pour l'État de prouver, cas par cas, si tel ou tel bien a été acquis en contrepartie d'actes de collaboration. En revanche, les acquéreurs des biens ou leurs descendants sont, en général, plus susceptibles de détenir des documents ou de connaître les circonstances de l'acquisition. On ne peut donc

considérer comme manifestement injuste le fait d'imposer à l'acquéreur la preuve de l'origine du bien. » (Décision de la Cour constitutionnelle, 31 mars 2011, 2008Hun-Ba141 ; 2009Hun-Ba14, 19, 36, 247, 352 ; 2010Hun-Ba91 (affaires jointes))

7. Lors de la révision de la Loi-cadre sur le règlement des affaires passées pour la vérité et la réconciliation, il serait envisageable d'introduire une disposition similaire établissant une présomption légale. Comme le décret d'application devra également être révisé, il conviendrait d'y ajouter une clause imposant à la Commission de statuer en matière de révélation de la vérité selon les critères qu'elle aura elle-même établis.
8. Ainsi, si une troisième Commission voit le jour, l'une de ses premières tâches sera d'examiner les critères définis par la première et la deuxième Commission, d'identifier les problèmes rencontrés et d'établir les critères de décision de la troisième Commission. Ceux-ci devront ensuite être intégrés dans les textes législatifs et dans le règlement interne d'enquête.
9. Dans ce processus, il serait également utile d'étudier les critères de décision adoptés et appliqués par d'autres commissions d'enquête, ainsi que leur influence sur les jugements rendus par les tribunaux.
10. En matière d'adoption internationale, la Loi sur la protection des informations personnelles est devenue un obstacle majeur empêchant les personnes adoptées à l'étranger de rechercher la vérité sur leurs origines.
11. La meilleure solution consisterait à modifier la Loi sur la protection des informations personnelles afin d'introduire une disposition spéciale pour les personnes adoptées à l'étranger, garantissant ainsi pleinement leurs droits. On pourrait également prévoir, dans la Loi-cadre sur le règlement des affaires passées pour la vérité et la réconciliation, une exemption à l'application de la loi sur la protection des données, permettant aux personnes adoptées d'avoir un accès complet à leurs informations personnelles.
12. Aucun obstacle ne doit entraver les enquêtes de la Commission.

Q&R

Sang Su HUH, Ancien commissaire, Commission vérité et réconciliation de Corée du Sud

Clôture

Mot de clôture



Boon Young HAN, Co-représentante de DKRG

Mesdames et Messieurs, chère.s collègues et amis,

Alors que cette importante conférence touche à sa fin, je tiens à exprimer notre profonde gratitude à toutes celles et ceux qui ont partagé leurs connaissances, leur expertise et, surtout, leur expérience personnelle.

À vous, personnes courageuses qui avez témoigné avec bravoure, vos voix nous rappellent l'impact humain des cadres juridiques et des obligations internationales que nous avons abordés. Votre courage nous encourage à poursuivre le travail que nous devons accomplir.

Nous remercions nos intervenants et participants, experts en droit et droits humains, représentants de la Commission Vérité et Réconciliation, et nos collègues des gouvernements et de la société civile. Les discussions d'aujourd'hui ont clairement démontré que l'implication de l'État dans les adoptions internationales forcées constitue une violation grave des droits fondamentaux, notamment le droit à la famille, à l'identité et à la protection contre la coercition.

Les conclusions de la CVR, confortées par les principes internationaux énoncés dans le Statut de Rome, la Convention relative aux droits de l'enfant et la résolution de l'UIP, soulignent que ces actes ne peuvent être oubliés et qu'il est impératif d'y remédier. La justice, la responsabilité et la réparation ne sont pas facultatives : ce sont des obligations légales et morales.

En quittant cette salle, poursuivons notre engagement commun : garantir réparation et reconnaissance aux victimes, rétablir leur identité et leurs droits, et empêcher que ces graves exactions ne se reproduisent. Notre mission n'est pas seulement de nous souvenir, mais aussi d'agir par le plaidoyer, la réforme du droit et la poursuite de la coopération internationale.

J'espère que la conférence d'aujourd'hui a renforcé notre détermination et notre réseau, et j'invite chacun d'entre nous à poursuivre ce travail avec courage, lucidité et compassion. Ensemble, nous pouvons transformer la reconnaissance en justice et la responsabilité en un véritable changement.

Merci.

Acknowledgments

이 과정을 함께해 주신 모든 분들께 깊은 감사의 마음을 전합니다. 여러분의 변함없는 지지와 공동의 헌신은 이 작업을 앞으로 나아가게 한 원동력이 되었으며, 모든 회의 자료를 한국어·영어·프랑스어로 제공함으로써 드러난 우리 공동체의 언어적 다양성은 이 노력이 넓은 연대 속에서 이루어졌음을 보여줍니다. 또한 강제실종이라는 국제적 기준의 중요성과 의의를 강조하는 성명을 통해 방향성과 힘을 더해 준 여러 단체에도 깊이 감사드립니다. 이러한 모든 기여는 의미 있는 변화가 연대와 공동의 목적 의식에서 비롯된다는 사실을 다시금 확인하게 해 줍니다.

We extend our heartfelt appreciation to everyone who has accompanied us on this journey. The strength of this work rests not in any single contribution, but in the shared commitment, solidarity, and cooperation of many. Our community's linguistic diversity is reflected in the conference materials, which have been made available in Korean, English, and French so that all voices may be included. We also acknowledge the organizations that have offered statements underscoring the relevance and urgency of the framework of enforced disappearance, reminding us that progress is possible only when we move forward together with clarity of purpose and a common understanding.

Nous exprimons notre profonde gratitude à toutes celles et ceux qui nous ont accompagnés dans ce travail, dont l'engagement collectif et la volonté partagée ont rendu chaque étape possible. La diversité linguistique de notre communauté se reflète dans la mise à disposition des documents de la conférence en coréen, en anglais et en français, permettant ainsi à chacun de participer pleinement. Nous remercions également les organisations partenaires dont les brèves déclarations soulignent l'importance et l'actualité du cadre relatif aux disparitions forcées, nous rappelant que tout progrès véritable repose sur un engagement commun et une compréhension partagée des enjeux auxquels nous faisons face.

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Statements from Organizations

뿌리의집 (KoRoot)



KoRoot has more than 20 years' experience providing support for adoptees and their families

upon returning to Korea. Too many reunions are overshadowed by the reality that the adoptions might not have been voluntary or legally valid. Decades of separation between children and their birth families have not been accidental but a direct consequence of state-sanctioned practices that meet the definition of enforced disappearance. In such cases, parents were not able to give informed consent, and children were removed from their families in ways that obscured the truth and erased their origins. This systemic failure has affected thousands of lives, leaving adoptees and their families grappling with identity loss, unanswered questions, and the lasting impact of human rights violations.

In response to these ongoing injustices and the systemic erasure of adoptees' and birth families' rights, KoRoot established the Center for Enforced Disappearance Adoptees (CEDA) in 2024. The center is dedicated to documenting cases of adoption without consent, supporting adoptees and birth families affected by enforced disappearance, and advocating for accountability and justice. CEDA also works to raise public awareness about the structural violations that allowed these practices to occur, and collaborates with national and international partners to ensure that the rights of adoptees and their families are recognized and protected. More information about CEDA's mission and activities can be found on the KoRoot homepage: <https://koroot.online/k-ceda>.

KoRoot possède plus de 20 ans d'expérience dans l'accompagnement des

personnes adoptées et de leurs familles lors de leur retour en Corée. Trop de retrouvailles sont assombries par la réalité selon laquelle ces adoptions n'ont jamais été volontaires ni légalement valides. Des décennies de séparation entre les enfants et leurs familles biologiques ne sont pas le fruit du hasard, mais la conséquence directe de pratiques sanctionnées par l'État qui correspondent à la définition de la disparition forcée. Dans ces cas, les parents n'ont jamais pu donner un consentement éclairé, et les enfants ont été retirés de leurs familles de manière à dissimuler la vérité et effacer leurs origines. Cette défaillance systémique a affecté des milliers de vies, laissant les personnes adoptées et leurs familles confrontées à une perte d'identité, à des questions sans réponse et à l'impact durable de violations des droits humains.

En réponse à ces injustices persistantes et à l'effacement systémique des droits des adoptés et de leurs familles biologiques, KoRoot a créé en 2024 le Centre pour les adoptés victimes de disparition forcée (CEDA). Le centre se consacre à la documentation des cas d'adoptions sans consentement, au soutien des adoptés et de leurs familles affectés par la disparition forcée, et à la promotion de la responsabilité et de la justice. Le CEDA travaille également à sensibiliser le public aux violations structurelles qui ont permis la survenue de ces pratiques, et collabore avec des partenaires nationaux et internationaux afin que les droits des adoptés et de leurs familles soient reconnus et protégés. Plus d'informations sur la mission et les activités du CEDA sont disponibles sur le site de KoRoot : <https://koroot.online/k-ceda>.

KoRoot는 20년 이상 해외입양인과 그 가족들이 한국으로 돌아온 후 적절한 지원을 받을 수 있도록 도와왔습니다. 그러나 많은 상봉이, 이러한 입양이 결코

자발적이거나 법적으로 유효하지 않았다는 현실 때문에 그 의미가 흐려지고 있습니다. 아동과 친가족 간 수십 년간의 분리는 우연한 결과가 아니라, 강제실종의 정의에 부합하는 국가 차원의 제도적 관행의 직접적인 결과였습니다. 이러한 경우 부모는 충분한 정보를 바탕으로 한 동의를 제공할 수 없었고, 아동은 그 출신과 진실이 은폐된 채 가족으로부터 강제로 분리되었습니다. 이러한 구조적 실패는 수천 명의 삶에 영향을 미쳤으며, 입양인과 그 가족들은 정체성 상실, 답을 얻지 못한 질문, 그리고 지속적인 인권 침해의 영향을 안고 살아가고 있습니다.

이러한 지속적인 불의와 입양인 및 친가족의 권리에 대한 체계적 말살에 대응하여, KoRoot는 2024년 ‘강제실종 입양인 센터(CEDA)’를 설립하였습니다. 이 센터는 동의 없는 입양 사례를 기록하고, 강제실종으로 영향을 받은 입양인과 친가족을 지원하며, 책임 추궁과 정의 실현을 촉진하는 일을 목적으로 합니다. 또한 CEDA는 이러한 관행이 발생할 수 있었던 구조적 인권 침해에 대한 대중의 인식을 높이고, 국내외 파트너와 협력하여 입양인과 가족들의 권리가 인정되고 보호될 수 있도록 노력하고 있습니다. CEDA의 활동과 사명에 대한 자세한 정보는 KoRoot 홈페이지에서 확인할 수 있습니다: <https://koroot.online/k-ceda>.

Danish Korean Rights Group (DKRG) / 덴마크한국인 진상규명그룹



Danish Korean Rights Group (DKRG) was founded in March 2022 with the sole purpose of establishing an TRC investigation into adoption in Korea. We are proud to have been the driving force in this historical achievement

and the many initiatives for similar investigations around the world.

Denmark ratified the *International Convention for the Protection of All Persons from Enforced Disappearance* in January 2022 and has since consecutively ranked 1st on the Corruption Perception Index. In the DKRG we have the highest of expectations that Denmark will continue to live up to its obligations under both international and domestic law and be a leader in protecting human rights.

Equally important is the need for strong bilateral cooperation between South Korea and Denmark. Both countries have legal obligations, but they also share a moral responsibility toward the thousands of adopted Koreans whose rights were violated. Only through coordinated action—including information sharing, joint investigations, and transparent access to archives—can the full truth be uncovered. Collaboration between the two states is crucial to ensure accountability, provide redress to the victims, and prevent such violations from ever occurring again. Denmark and South Korea must stand together in recognizing past harms and in building mechanisms that protect the rights of all children, families, and adoptees in the future.

Le Danish Korean Rights Group (DKRG) a été fondé en mars 2022 dans le seul but d'obtenir l'ouverture d'une enquête de la Commission Vérité et Réconciliation (TRC) sur l'adoption en Corée. Nous sommes fiers d'avoir été la force motrice de cette avancée historique ainsi que des nombreuses initiatives visant à mener des enquêtes similaires à travers le monde.

Le Danemark a ratifié la Convention internationale pour la protection de toutes les personnes contre les disparitions forcées en janvier 2022 et s'est classé, plusieurs années de suite, au premier rang de l'indice de perception

de la corruption. Au sein de la DKRG, nous avons les plus grandes attentes quant au fait que le Danemark continuera de respecter ses obligations, tant en vertu du droit international que du droit national, et demeurera un acteur exemplaire dans la protection des droits humains.

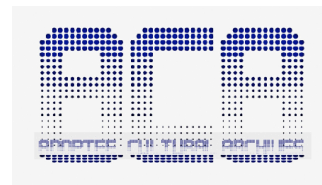
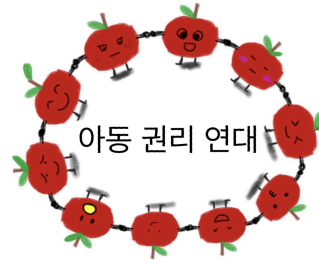
Il est tout aussi essentiel de renforcer la coopération bilatérale entre la Corée et le Danemark. Les deux pays ont des obligations juridiques, mais ils partagent également une responsabilité morale envers les milliers d'adoptés dont les droits ont été violés. Seule une action coordonnée — incluant le partage d'informations, des enquêtes conjointes et un accès transparent aux archives — permettra d'établir toute la vérité. La collaboration entre les deux États est indispensable pour garantir la reddition de comptes, offrir réparation aux victimes et prévenir la répétition de telles violations. Le Danemark et la Corée doivent agir de concert pour reconnaître les préjudices du passé et mettre en place des mécanismes qui protègent les droits de tous les enfants, familles et adoptés à l'avenir.

덴마크한국인권그룹(DKRG)은 한국에서 입양에 대한 진실규명 조사를 추진하기 위한 단 하나의 목적을 가지고 2022년 3월에 설립되었습니다. 우리는 이 역사적인 성과와 전 세계에서 유사한 조사들이 추진될 수 있도록 이끄는 데 핵심적인 역할을 했다는 점을 자랑스럽게 생각합니다.

덴마크는 2022년 1월 ‘모든 사람의 강제실종으로부터의 보호에 관한 국제협약(ICPPED)’을 비준하였으며, 여러 해 연속으로 부패인식지수(Corruption Perception Index) 1위를 차지해 왔습니다. DKRG는 덴마크가 국제법과 국내법 모두에서 부여된 의무를 지속적으로 충실히 이행하고, 인권 보호의 모범 국가로서의 역할을 계속할 것이라고 굳게 기대하고 있습니다.

동시에, 한국과 덴마크 간의 강력한 양자 협력 또한 매우 중요합니다. 두 국가는 법적 의무를 지니고 있을 뿐만 아니라, 권리를 침해당한 수천 명의 입양인들에게 도덕적 책임 또한 공유하고 있습니다. 정보 공유, 공동 조사, 투명한 기록 접근 등과 같은 긴밀하고 조정된 조치를 통해서만 전체 진실을 규명할 수 있습니다. 양국의 협력은 책임 규명, 피해자에 대한 적절한 조치, 그리고 이러한 인권 침해가 다시는 발생하지 않도록 예방하는 데 필수적입니다. 덴마크와 한국은 과거의 피해를 공동으로 인정하고, 미래의 모든 아동·가족·입양인의 권리를 보호하는 제도적 장치를 구축하기 위해 함께 나아가야 합니다.

아동권리연대 (Children's Rights Solidarity)



A.C.A. (Adoptee Cultural Archives) is an international cultural archives website made

by/about international or/and interracial adoptees and reviewed in the media.

It is clear from memoirs, films, etc.—whether artistic expression or not—that we, international and interracial adoptees, have been sharing our stories of missing pieces by enforced disappearances and forced migrations. We would love that South Korea realizes its responsibilities to take action to implement human rights that serve the needs of

international and interracial adoptees as well as birth families—rather than the adoptive parents and the profitable adoptive system.

A.C.A. (Archives Culturelles des Adoptées) est un site internet d'archives culturelles internationales sur la culture (artistique) faite par/sur les adoptées, ainsi que la couverture médiatique.

Il est clairement de par les mémoires, les films, etc., qu'il s'agisse d'expression artistique ou non, que nous, les personnes adoptées à l'international et inter-racialement, partageons nos histoires de pertes liées aux disparitions forcées et aux migrations forcées. Nous souhaitons que la Corée du Sud prenne ses responsabilités et prenne des mesures concrètes pour mettre en œuvre des droits humains qui répondent aux besoins des personnes adoptées à l'international et inter-racialement, ainsi qu'aux familles biologiques. Et non pas aux intérêts des parents adoptifs et du système lucratif de l'adoption internationale.

<https://adopteeculturalarchives.wordpress.com/>

****A.C.A (Adoptee Cultural Archives, 입양인 문화 아카이브)****는 국제 입양인 및/또는 다인종 입양인이 제작한 국제 문화 아카이브 웹사이트로, 언론에서도 소개된 바 있습니다.

회고록, 영화 등 예술적 표현 여부와 관계없이, 우리는 국제 입양인과 다인종 입양인으로서 강제실종과 강제 이주로 인해 잃어버린 조각들에 대한 이야기를 꾸준히 공유해왔습니다.

우리는 한국 정부가 국제 입양인과 다인종 입양인, 그리고 출생 가족의 필요를 충족시키는 인권을 실질적으로 구현하고 책임을 다하는 조치를 취하기를 바랍니다. 이는 입양 부모나 입양 관련 수익 구조를 위한 것이 되어서는 안 됩니다.

Australia United States Korean Rights Group



(AUSKRG) The Australia and United States Korean Rights Group (AUSKRG) is a non-profit organisation

founded by adoptees from South Korea who were adopted to Australia and the United States through Eastern Social Welfare Society (ESWS, prev. Eastern Child Welfare Society).

Following the TRC's report (26 March 2025), there are serious concerns about the possibility of widespread enforced disappearance of Korean children who were kidnapped and sold for profit under coercive circumstances. The institutions, mechanisms and authorising environments in both South Korea and receiving countries that allowed for the systematic disappearance of children need to be investigated.

Given the systemic human rights violations, AUSKRG strongly urges:

- the Australian and United States governments to support the ongoing TRC investigation (via TRC3) into South Korean intercountry adoptions and the enforced disappearance of Korean children to Australia, the United States and other receiving countries;
- the Australian government to support an independent investigation into Australia's role and accountability to the present day as the central adoption authority for all intercountry adoptions, and the responsibility of its jurisdictions prior to the ratification of the Hague Convention on Protection of Children and Co-operation in Intercountry Adoption (Hague Convention), under

the United Nations Convention on the Rights of the Child and the Rome Statute (International Criminal Court Act 2002);

- the United States government to support an independent investigation on intercountry adoptions under the Hague Convention and prior to ratification in 2000.

It is imperative that these serious human rights violations continue to be investigated for the truth, healing and reconciliation of adoptees and their families, and to ensure that these abuses do not continue to happen, now and into the future.

L’Australia and United States Korean Rights Group (AUSKRG) est une organisation à but non lucratif fondée par des personnes adoptées originaires de Corée du Sud et adoptées en Australie et aux États-Unis par l’intermédiaire de l’Eastern Social Welfare Society (ESWS, auparavant Eastern Child Welfare Society).

À la suite du rapport de la Commission vérité et réconciliation (TRC) du 26 mars 2025, de graves inquiétudes subsistent quant à la possibilité d’une disparition forcée à grande échelle d’enfants coréens qui auraient été enlevés et vendus à des fins lucratives dans des circonstances coercitives. Les institutions, les mécanismes et les environnements d’autorisation, en Corée du Sud comme dans les pays d’accueil, qui ont permis la disparition systématique d’enfants, doivent faire l’objet d’enquêtes approfondies.

Compte tenu de ces violations systémiques des droits humains, l’AUSKRG exhorte fermement :

- les gouvernements australien et américain à soutenir l’enquête en cours menée par la TRC (via la TRC3) sur les adoptions internationales en provenance de Corée du Sud et sur les disparitions

forcées d’enfants coréens vers l’Australie, les États-Unis et d’autres pays d’accueil ;

- le gouvernement australien à soutenir une enquête indépendante sur le rôle et la responsabilité de l’Australie jusqu’à aujourd’hui en tant qu’autorité centrale pour toutes les adoptions internationales, ainsi que sur la responsabilité de ses juridictions avant la ratification de la Convention de La Haye sur la protection des enfants et la coopération en matière d’adoption internationale, conformément à la Convention des Nations unies relative aux droits de l’enfant et au Statut de Rome (International Criminal Court Act 2002) ;
- le gouvernement des États-Unis à soutenir une enquête indépendante sur les adoptions internationales effectuées en vertu de la Convention de La Haye et avant sa ratification en 2000.

Il est impératif que ces graves violations des droits humains continuent d’être examinées afin de parvenir à la vérité, à la guérison et à la réconciliation des personnes adoptées et de leurs familles, et afin de garantir que ces abus ne puissent plus jamais se reproduire, aujourd’hui comme à l’avenir.

****호주·미국 한국 입양인
진상규명그룹(AUSKRG)**은
동방사회복지회(ESWS, 구
동방아동복지회)를 통해 호주와 미국으로
입양된 한국 출신 입양인들이 설립한
비영리 단체입니다.**

2025년 3월 26일 발표된
진실화해위원회(TRC) 보고서 이후, 강압적
상황 속에서 한국 아동이 납치되어 금전적
이익을 위해 판매되었을 가능성, 그리고
이에 따른 광범위한 강제실종의 우려가

제기되고 있습니다. 한국과 수용국 모두에서 아동의 조직적인 실종을 가능하게 했던 제도, 구조적 메커니즘, 승인 환경은 반드시 철저한 조사가 이루어져야 합니다.

이러한 체계적인 인권침해를 고려하여, AUSKRG는 다음 사항을 강력히 촉구합니다.

- 호주와 미국 정부는 TRC3를 통해 진행 중인 한국의 해외입양 및 아동 강제실종 조사에 대해 적극적인 지지를 표명하고 협력할 것;
- 호주 정부는 모든 해외입양의 중앙권한기관으로서 오늘날까지의 역할과 책임, 그리고 헤이그 국제아동입양협약(Hague Convention) 비준 이전 각 주·준주의 책임을 유엔 아동권리협약 및 로마규정(International Criminal Court Act 2002)에 따라 독립적으로 조사하도록 지원할 것;
- 미국 정부는 헤이그 협약 체계 아래 이루어진 해외입양 및 2000년 비준 이전에 이루어진 해외입양 전반에 대해 독립적인 조사를 지원할 것.

입양인과 그 가족들의 진실 규명, 치유, 화해를 위해서는 이러한 중대한 인권침해에 대한 조사가 지속적으로 이루어져야 하며, 과거와 같은 인권침해가 현재와 미래에 다시 반복되지 않도록 하는 것이 무엇보다 중요합니다.

Canadian Korean Rights Group (CKRG) & United States Korean Rights Group (USKRG)



Enforced disappearance is an essential framework for understanding the systemic separation of Korean

children from their families through intercountry adoption. As Korean adoptees residing in the United States and Canada, we recognize that thousands of us were not “relinquished” through informed consent, but disappeared—removed from our identities, families, and nation through state-enabled practices and private adoption agencies that falsified, concealed, or fabricated our records.



Neither the United States nor Canada has ratified the UN International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). As a result, there is no formal mechanism within either country that recognizes adoptees as victims of enforced disappearance, nor any process to ensure truth, accountability, or reparations for adoptees whose disappearances occurred through adoption systems.

Following the conclusions of the Korean Truth and Reconciliation Commission, the framework of enforced disappearance offers a vital pathway to reframing intercountry adoption as a human rights issue, rather than a charitable or private family matter. This framework compels states to investigate, cooperate internationally, guarantee access to records, and provide restitution to the disappeared and their families.

Today, recognizing adoptees as victims of enforced disappearance is essential to

addressing lifelong violations of identity, kinship, and citizenship—and to ensuring that such disappearances can never be repeated.

It may be important to note that, as the United States has not formally recognized these cases as human rights violations, and given that many Korean adoptees (KADs) residing in the U.S. remain without citizenship, there is a significant hesitation among them to submit cases to the Truth & Reconciliation Commission or to participate in related investigative processes. This reluctance stems from concerns about drawing unwanted attention to their legal status or personal histories. Such barriers highlight the need for stronger international cooperation and protective measures to ensure that victims and witnesses of enforced disappearance can participate safely and without fear of reprisal.

La disparition forcée constitue un cadre essentiel pour comprendre la séparation systémique des enfants coréens d'avec leurs familles dans le contexte de l'adoption internationale. En tant qu'adopté·es coréen·nes résidant aux États-Unis et au Canada, nous reconnaissons que des milliers d'entre nous n'ont pas été « confié·es » avec un consentement éclairé, mais ont disparu — arraché·es à notre identité, à nos familles et à notre pays au moyen de pratiques facilitées par l'État et par des organismes privés d'adoption qui ont falsifié, dissimulé ou fabriqué nos dossiers.

Ni les États-Unis ni le Canada n'ont ratifié la Convention internationale pour la

protection de toutes les personnes contre les disparitions forcées (CIPPDF/ICPPED) des Nations Unies. Par conséquent, aucun de ces deux pays ne dispose d'un mécanisme officiel permettant de reconnaître les adopté·es comme victimes de disparition forcée, ni d'un processus garantissant la vérité, la responsabilité ou des réparations pour les adopté·es dont la disparition s'est produite par le biais des systèmes d'adoption.

À la suite des conclusions de la Commission vérité et réconciliation de Corée, le cadre de la disparition forcée offre une voie essentielle pour requalifier l'adoption internationale comme une question de droits humains, et non comme un acte philanthropique ou une affaire strictement familiale et privée. Ce cadre oblige les États à enquêter, à coopérer au niveau international, à garantir l'accès aux archives et à fournir réparation aux personnes disparues et à leurs familles.

Aujourd'hui, reconnaître les adopté·es comme victimes de disparition forcée est indispensable pour répondre aux violations durables de l'identité, des liens familiaux et de la citoyenneté — et pour garantir que de telles disparitions ne puissent plus jamais se reproduire.

Il convient également de souligner que, les États-Unis n'ayant pas reconnu ces cas comme des violations des droits humains et nombre d'adopté·es coréen·nes (KADs) résidant aux États-Unis ne disposant toujours pas de la citoyenneté, beaucoup hésitent à soumettre leur dossier à la Commission vérité et réconciliation ou à participer aux processus d'enquête

associés. Cette réticence découle de craintes d'attirer une attention non souhaitée sur leur statut légal ou leur histoire personnelle. De tels obstacles mettent en évidence la nécessité d'un renforcement de la coopération internationale et de mesures de protection afin de garantir que les victimes et témoins de disparition forcée puissent participer en toute sécurité et sans crainte de représailles.

강제실종(enforced disappearance)은 국제입양을 통해 한국 아동이 가족으로부터 체계적으로 분리된 과정을 이해하는 데 필수적인 분석 틀입니다. 미국과 캐나다에 거주하는 한국 입양인으로서 우리는, 수천 명의 입양인이 ‘충분한 정보에 기반한 동의’를 통해 “위탁”된 것이 아니라, 실종되었다는 사실을 인식합니다. 우리는 정체성, 가족, 국가로부터 분리되었고, 국가가 가능하게 한 관행과 민간 입양기관들에 의해 기록이 조작·은폐·위조되는 과정 속에서 사라졌습니다.

미국과 캐나다는 유엔 「모든 사람을 강제실종으로부터 보호하기 위한 국제협약(ICPPED)」을 아직 비준하지 않았습니다. 그 결과, 두 나라 모두에서 입양인을 강제실종 피해자로 인정하는 공식적인 제도적 장치가 없으며, 입양 절차를 통해 발생한 실종에 대해 진실 규명, 책임 소재 규명, 또는 배상을 보장하는 절차도 존재하지 않습니다.

한국 진실·화해를위한과거사정리위원회의 결론에 따라, 강제실종이라는 분석 틀은 국제입양을 자선 혹은 개인적 가족 문제로 보는 기존의 인식을 넘어, 인권 문제로 재구성하는 데 있어 중요한 관점을 제공합니다. 이 틀은 국가가 조사할 책임, 국제적 협력 의무, 기록 접근을 보장할 의무, 그리고 실종 피해자와 그 가족에게 회복적 조치를 제공해야 할 의무가 있음을 명확히 합니다.

오늘날 입양인을 강제실종 피해자로 인정하는 것은 정체성, 혈연, 시민권과 관련된 평생의 권리 침해를 해결하고, 이러한 실종이 현재와 미래에 다시는 반복되지 않도록 하기 위해 필수적입니다.

또한 중요한 점은, 미국이 이러한 사례를 공식적으로 인권 침해로 인정하지 않고 있으며, 미국에 거주하는 많은 한국 입양인(KAD)들이 아직 시민권을 획득하지 못한 상태이기 때문에, 상당수 입양인들이 진실·화해위원회에 사건을 제출하거나 관련 조사 과정에 참여하기를 주저하고 있다는 것입니다. 이러한 주저함은 자신의 법적 지위나 개인적 배경에 원치 않는 관심이 집중될 수 있다는 우려에서 비롯됩니다. 이러한 장벽은 강제실종의 피해자와 증인이 보복의 두려움 없이 안전하게 참여할 수 있도록 더 강력한 국제 협력과 보호 조치가 필요함을 보여줍니다.

Collectif DAC France (Droits des Adoptés de Corée)



Collectif DAC France is an association founded in 2024 by Korean adoptees living in France and their allies. Its mission is to seek recognition of the illegal and irregular adoptions that took place between South Korea and France since the 1960s.

In France, the collective plays a leading role in the actions launched by the publication of the interministerial investigation report on international adoptions, a first step toward official recognition of the violations that occurred. We are committed to advancing truth, justice, and reparations at the national, European, and international levels.

We work closely with international adoptee collectives, researchers (notably Yves Denéchère and Olivier de Frouville), and legal

experts engaged in these issues. Collectif DAC France fully supports the Truth and Reconciliation Commission 3 (TRC3) and calls for a thorough investigation into falsified records, enforced disappearances of children, and abusive medical practices.

These were not mere “administrative errors” but serious human rights violations. The truth must finally be restored to adoptees and their families, both in South Korea and in their countries of adoption.

Le Collectif DAC France est une association fondée en 2024 par des adopté·e·s coréen·ne·s vivant en France et leurs alliés·es. Sa mission est de faire reconnaître les adoptions illégales et irrégulières survenues entre la Corée du Sud et la France depuis les années 1960.

En France, le Collectif joue un rôle moteur dans la dynamique ouverte par la publication du rapport d'enquête interministérielle sur les adoptions internationales, première étape vers une reconnaissance officielle des violations commises. Nous travaillons à faire avancer la vérité, la justice et la réparation, au niveau national, européen et international.

Nous collaborons étroitement avec les collectifs internationaux d'adoptés, les chercheur·euses (Yves Denéchère et Olivier de Frouville en particulier) et les juristes mobilisés sur ces questions. Le Collectif soutient pleinement la troisième Commission Vérité et Réconciliation (TRC3) et appelle à une enquête approfondie sur les falsifications de dossiers, les disparitions forcées d'enfants et les pratiques médicales abusives.

Nous refusons que ces crimes soient réduits à de simples “erreurs administratives” : il s'agit de violations graves des droits humains. La vérité doit enfin être rendue aux personnes adoptées et à leurs familles, en Corée du Sud comme dans leur pays d'adoption.

Collectif DAC France (콜렉티프 DAC 프랑스)**는 2024년에 프랑스에 거주하는 한국 입양인들과 그들의 지지자들이 설립한 단체입니다. 우리의 사명은 1960년대 이후 대한민국과 프랑스 사이에서 이루어진 불법·불규칙 입양을 공식적으로 인정받는 것입니다.

프랑스에서 본 콜렉티프는 국제입양에 대한 부처 합동 조사보고서의 발표를 계기로 열린 새로운 흐름을 이끄는 중요한 역할을 하고 있습니다. 이 보고서는 그동안 발생한 위반 사항들에 대한 공식적 인정으로 나아가는 첫 단계입니다. 우리는 국내, 유럽, 그리고 국제적 차원에서 진실, 정의, 그리고 배상의 진전을 위해 활동하고 있습니다.

또한 우리는 국제 입양인 단체들, 연구자들 (특히 이브 드네셰르와 올리비에 드 프루빌), 그리고 이 문제에 헌신하는 법률 전문가들과 긴밀히 협력하고 있습니다. 콜렉티프는 제3기 진실·화해위원회(TRC3)를 전적으로 지지하며, 서류 조작, 아동의 강제실종, 그리고 인권을 침해하는 의료 관행에 대한 철저한 조사를 촉구합니다.

우리는 이러한 범죄가 단순한 “행정적 실수”로 축소되는 것을 거부합니다. 이는 중대한 인권 침해입니다. 진실은 마침내 입양인들과 그들의 가족—한국과 입양국 모두에서—에게 돌아가야 합니다.

Critical Adoptees Front Europe (CAFE)



Critical Adoptees Front Europe

CAFE

Every forced adoption starts as an enforced disappearance. Like a stone being dropped in the water, it disappears but its ripples reverberate throughout the water, as have the lost children who were snatched from their families

and taken to other parts of the world. Now more than ever, it is important to our adoptee community that our true stories are told through official investigations like the Korean Truth and Reconciliation Commission (TRC)—that we were not given up by our families but involuntarily taken away from them. And with that our rights, as stated in the United Nations Convention on the Rights of the Child (UNCRC), were violated: rights to protection against unlawful disappearance; rights to preserve our national, cultural, and ethnic identity, including our names and family relations, without unlawful interference. These are the rights of the adoptees that CAFE (Critical Adoptees Front Europe) advocate and fight for from a critical perspective of adoption that views enforced adoption as a form of enforced disappearance. For us, it is vital that this perspective is acknowledged, and that governments follow international human rights regarding this matter. Only then, true reconciliation and healing for adoptees can begin.

Belgium has ratified the UN International Convention for the Protection of All Persons from Enforced Disappearance and played a vital role in its creation. However, most of its principles have yet to be implemented in local law and policy.

Chaque adoption forcée commence par une disparition forcée. Comme une pierre qu'on laisse tomber dans l'eau, elle disparaît, mais ses ondes se propagent partout à la surface — tout comme les enfants perdus qui ont été arrachés à leurs familles et envoyés dans d'autres régions du monde. Aujourd'hui plus que jamais, il est essentiel pour notre communauté d'adoptées que nos véritables histoires soient révélées par des enquêtes officielles comme celle de la Commission vérité et réconciliation (TRC) en Corée : que nous n'avons pas été "abandonné-es" par nos familles, mais bien arraché-es à elles contre leur volonté. Et ce faisant, nos droits — tels qu'énoncés dans la

Convention des Nations unies relative aux droits de l'enfant — ont été violés. Le droit à la protection contre les disparitions illégales. Le droit de préserver notre identité nationale, culturelle et ethnique, notre nom et nos relations familiales, sans ingérence illégale.

Ce sont ces droits des personnes adoptées que CAFE (Critical Adoptees Front Europe) défend et pour lesquels elle se bat, à partir d'une perspective critique de l'adoption qui considère l'adoption forcée comme une forme de disparition forcée. Pour nous, il est essentiel que cette perspective soit reconnue et que les gouvernements respectent les normes internationales en matière de droits humains concernant cette question. Ce n'est qu'à cette condition que de véritables réparations et un véritable processus de guérison pourront commencer pour les adoptées.

La Belgique a ratifié la Convention internationale pour la protection de toutes les personnes contre les disparitions forcées et a joué un rôle essentiel dans sa création. Cependant, la plupart de ses principes restent encore à être intégrés dans la législation et les politiques nationales.

모든 강제입양은 강제실종에서 시작됩니다. 물에 던져진 돌처럼, 눈앞에서 사라지지만 그 파문은 물 전체로 퍼져 나갑니다. 가족에게서 떼어져 세계 곳곳으로 보내졌던 잃어버린 아이들도 마찬가지였습니다. 지금 이 순간, 우리의 진짜 이야기가 한국의 진실화해위원회(TRC)와 같은 공식 조사를 통해 밝혀지는 것은 전 세계 입양인 공동체에게 무엇보다 중요합니다. 우리는 가족에게서 “버려진” 것이 아니라, 그들의 의사와 상관없이 강제로 떼어 놓였다는 사실이 드러나야 합니다. 그리고 그 과정에서 유엔 아동권리협약에 명시된 우리의 권리가 침해되었습니다. 불법적인 실종으로부터 보호받을 권리. 우리의

이름과 가족관계, 민족적·문화적·국적 정체성을 불법적인 간섭 없이 보존할 권리.

이러한 입양인의 권리를 옹호하며, 강제입양을 강제실종의 한 형태로 보는 비판적 관점에서 활동하는 단체가 바로 CAFE(Critical Adoptees Front Europe)입니다. 우리에게 중요한 것은 이 관점이 공식적으로 인정되고, 각국 정부가 이에 대해 국제 인권 규범을 준수하는 것입니다. 그래야만 입양인들에 대한 진정한 치유와 회복이 비로소 시작될 수 있습니다.

벨기에는 유엔 「모든 사람의 강제실종으로부터의 보호에 관한 국제협약」을 비준했으며, 그 제정 과정에서도 중요한 역할을 했습니다. 그러나 그 핵심 원칙 대부분은 아직 국내 법과 정책에 충분히 반영되지 못하고 있습니다

Francophones Korean Rights Groups (FKRG) & Suisse-FKRG



FKRG is a Francophone platform that archives and shares media information questioning/criticizing South Korean international adoption to French-speaking countries/regions.



FKRG references the DKRG, the initiation of this truth and reconciliation movement by the Danish Korean Rights Group (DKRG) and G-KRG (the Global KRG group). FKRG-Suisse was established specifically in Lausanne in November 2025 with the film-meeting event *Adoption and Transmissions: Access to Our Information*, organized by Dr. Cynthia Kraus to continue sharing information in French-speaking Switzerland regarding the Truth and Reconciliation Commission of Korea (TRCK).

- What is the significance of enforced disappearance in addressing adoption issues today?

F-KRG est une plateforme francophone qui archive et partage les information médiatiques questionnant/critiquant l'adoption international de Corée du Sud dans les pays/régions francophones des pays adoptants. F-KRG fait référence au DKRG, l'initiation de ce mouvement par le groupe danois des Korean Rights (DKRG) et G-KRG (Le groupe global des KRG). F-KRG-Suisse – Établi spécialement à Lausanne depuis novembre 2025 avec l'événement ciné-rencontre *Adoption et Transmissions : Accès à Nos Informations*, organisé par Dre Cynthia Kraus pour continuer la diffusion d'informations en Suisse romande sur la Commission Vérité et Réconciliation.

IbyangIN (Ibyang International Network)



IbyangIN
(Ibyang

International Network) was established with the purpose of creating a sustainable platform that empowers both overseas and domestic Korean adoptees to engage with South Korean society by providing integrated support to overcome barriers of language, culture, and distance. In doing so, we envision building an infrastructure of adopted overseas Koreans that influences policy and public discourse on issues related to child and single-parent welfare, family preservation, and the rights of adoptees in South Korea.

The language of human rights has become increasingly urgent as more adoptees and their families come forward to document the long-term consequences of adoption without consent. Each story reflects not only personal loss but also the broader systemic failures that

have allowed decades of enforced separation to occur. Through research, advocacy, and public engagement, Ibyang International Network seeks to give voice to those who were silenced and to ensure that the structural injustices embedded in past adoption practices are recognized. By framing these experiences within a human rights perspective, we aim to advance accountability, support survivors, and influence policy reforms in South Korea and internationally. In doing so, we emphasize that adoptees are not merely beneficiaries of support programs but active agents whose insights and lived experiences must shape the discourse on child welfare, family preservation, and the rights of adoptees in both domestic and global contexts.

IbyangIN (Ibyang International Network) a été créé dans le but de développer une plateforme durable permettant aux personnes adoptées coréennes, tant à l'étranger qu'au sein du pays, de s'engager avec la société coréenne en leur fournissant un soutien intégré pour surmonter les barrières linguistiques, culturelles et géographiques. Ce faisant, nous envisageons de construire une infrastructure d'adoptées coréen-ne-s à l'étranger capable d'influencer les politiques et le débat public sur des questions liées au bien-être des enfants et des parents isolés, à la préservation des familles et aux droits des adopté-e-s en Corée du Sud.

Le langage des droits humains devient de plus en plus urgent à mesure que de plus en plus d'adoptés et de leurs familles prennent la parole pour documenter les conséquences à long terme des adoptions sans consentement. Chaque récit reflète non seulement une perte personnelle, mais aussi les échecs systémiques plus larges qui ont permis des décennies de séparation forcée. Grâce à la recherche, au plaidoyer et à l'engagement public, Ibyang International Network s'efforce de donner une voix à ceux qui ont été réduit-e-s au silence et

de veiller à ce que les injustices structurelles intégrées aux pratiques d'adoption passées soient reconnues. En abordant ces expériences sous l'angle des droits humains, nous visons à promouvoir la responsabilité, à soutenir les survivants et à influencer les réformes politiques en Corée du Sud et à l'international. Ce faisant, nous soulignons que les adopté-e-s ne sont pas simplement des bénéficiaires de programmes de soutien, mais des acteur-ice-s actif-ve-s dont les expériences et les connaissances vécues doivent façonner le débat sur le bien-être des enfants, la préservation des familles et les droits des adopté-e-s, tant au niveau national qu'international.

Ibyang International Network는 해외 및 국내 한국 입양인들이 언어, 문화, 거리라는 장벽을 극복하고 한국 사회와 적극적으로 소통할 수 있도록 통합적인 지원을 제공하는 지속 가능한 플랫폼을 만들기 위해 설립되었습니다. 이를 통해 우리는 해외 입양 한국인들이 아동 및 한부모 복지, 가족 보존, 입양인의 권리와 관련된 정책과 공적 담론에 영향을 미칠 수 있는 인프라를 구축하고자 합니다.

점점 더 많은 입양인과 그 가족들이 동의 없는 입양으로 인해 발생한 장기적 결과를 기록하며 목소리를 내면서, 인권의 중요성은 그 어느 때보다 절실해지고 있습니다. 각 사례는 개인적 상실을 보여줄 뿐만 아니라, 수십 년간의 강제적 분리를 가능하게 한 구조적 실패를 드러냅니다. Ibyang International Network는 연구, 옹호 활동, 대중 참여를 통해 침묵당했던 사람들의 목소리를 세상에 전하고, 과거 입양 관행에 내재된 구조적 불의를 인정받도록 노력합니다. 이러한 경험을 인권의 관점에서 조명함으로써, 우리는 책임 추궁을 촉진하고 생존자를 지원하며, 한국 내외 정책 개혁에 영향을 미치고자 합니다. 이를 통해 입양인은 단순한 지원 프로그램의 수혜자가 아니라, 자신들의

경험과 삶의 이야기를 바탕으로 아동 복지, 가족 보존, 입양인의 권리에 관한 논의를 형성하는 능동적 주체임을 강조합니다.

InterCountry Adoptee Voices (ICAV)



The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is one of the most vital human rights instruments for intercountry adoptees

seeking truth and justice. It recognises enforced disappearance as a continuing crime until the person's fate or whereabouts are clarified—a principle that resonates deeply with adoptees who were taken, displaced, or trafficked across borders under false identities.

For many intercountry adoptees, especially those from periods of conflict or weak oversight and governance, their separation from families of origin involved falsified documents, abduction, or coercion—acts that align with the definition of enforced disappearance under ICPPED. The Convention therefore provides a legal and moral framework that acknowledges these injustices as violations of international law, not as isolated adoption “irregularities.”

When viewed alongside the ICAV InterCountry Adoptee Rights Charter, ICPPED strengthens calls for states to investigate illicit adoptions, ensures access to identity and family information, and provides reparations to victims. Its importance lies in affirming that the right to know the truth, the right to one's origins, and the right to family connection are non-negotiable and enduring. For adoptees, ICPPED represents both recognition of historical harm and a pathway toward

accountability, truth recovery, and restoration of identity.

La Convention internationale pour la protection de toutes les personnes contre les disparitions forcées (ICPPED) est l'un des instruments les plus essentiels en matière de droits humains pour les adoptés internationaux recherchant vérité et justice. Elle reconnaît la disparition forcée comme un crime continu tant que le sort ou le lieu de la personne n'est pas clarifié — un principe qui résonne profondément chez les adoptés qui ont été enlevés, déplacés ou trafiqués à travers les frontières sous de fausses identités.

Pour beaucoup d'adopté·e·s à l'international, en particulier ceux issus de périodes de conflit ou de gouvernance et de contrôle faibles, leur séparation des familles d'origine impliquait des documents falsifiés, des enlèvements ou des pressions — des actes qui correspondent à la définition de la disparition forcée telle qu'énoncée dans l'ICPPED. La Convention fournit donc un cadre juridique et moral qui reconnaît ces injustices comme des violations du droit international, et non comme de simples « irrégularités » d'adoption isolées.

Lorsqu'elle est considérée conjointement avec la Charte des droits des adoptés internationaux (ICAV), l'ICPPED renforce les appels adressés aux États afin d'enquêter sur les adoptions illicites, de garantir l'accès à l'information sur l'identité et la famille, et de fournir des réparations aux victimes. Son importance réside dans l'affirmation que le droit de connaître la vérité, ses origines et de maintenir un lien familial est inaliénable et permanent. Pour les adoptés, l'ICPPED représente à la fois la reconnaissance des préjudices historiques et une voie vers la responsabilité, la restitution de la vérité et la restauration de l'identité.

모든 사람의 강제실종으로부터의 보호에 관한 국제협약(ICPPED)은 진실과

정의를 추구하는 국제 입양인들에게 가장 중요한 인권 도구 중 하나입니다. 이 협약은 개인의 행방이나 운명이 명확히 밝혀질 때까지 강제실종을 지속적인 범죄로 규정하며, 이는 거짓된 신분으로 국경을 넘어 데려가지고, 추방되거나, 인신매매된 입양인들에게 깊은 공감을 불러일으킵니다.

특히 갈등 시기나 감독 및 관리가 취약했던 시기에 입양된 많은 국제 입양인들의 경우, 친가족과의 분리는 위조된 문서, 납치, 강압과 같은 방식으로 이루어졌으며, 이는 ICPPED에서 정의한 강제실종의 요건에 부합합니다. 따라서 이 협약은 이러한 부당함을 단순한 입양 “불규칙”이 아닌 국제법 위반으로 인정하는 법적·도덕적 틀을 제공합니다.

ICAV 국제 입양인 권리 헌장과 함께 볼 때, ICPPED는 국가가 불법 입양을 조사하고, 입양인 및 가족이 신원과 가족 정보를 열람할 수 있도록 보장하며, 피해자에게 배상을 제공할 것을 촉구하는 근거를 강화합니다. 이 협약의 중요성은 진실을 알 권리, 자신의 출신을 알 권리, 가족과의 연결을 유지할 권리가 양도할 수 없고 영구적이라는 점을 확립하는 데 있습니다. 입양인에게 ICPPED는 과거 피해를 인정받는 동시에 책임 추궁, 진실 회복, 정체성 회복으로 나아가는 길을 의미합니다.

K.O.A. (Korean Overseas Adoptees)



K.O.A. was established in 1996 and is dedicated to free consulting to guide South Korean overseas adoptees in their background/family search process, and continues to serve in French and English.

For over 30 years (since 1991), the discovery of “forgotten” documents (those from orphanages and/or town halls) has been a

deliberate practice by adoption agencies, under the auspices of the South Korean administration, to make international adoptions acceptable to receiving countries. South Korea conveniently turned a blind eye to a system perfectly designed to appeal to international demand. This system has been used to assist adoptees in their search for biological families, to uncover falsified information in adoption files, to demonstrate a lack of follow-up, and to perpetuate lies by adoption agencies under the guise of domestic law, and now, lies perpetrated under the NCRC (National Child Rights Commission), which should serve adoptees and not protect the information of adoption agencies.

K.O.A. (Korean Overseas Adoptees) a été fondé en 1996, cette association propose des consultations GRATUITES pour accompagner les Sud-Coréens adoptés à l'étranger dans leurs recherches d'origine et de famille, et continue d'offrir ses services en français et en anglais.

Depuis plus de 30 ans (1991), la découverte de documents oubliés (ceux des orphelinats et/ou des mairies) volontairement par les agences d'adoption et sous la responsabilité de l'administration sud-coréenne pour rendre les adoptions internationales admissibles pour les pays récepteurs. La Corée du Sud a gentiment fermé les yeux sur un système parfaitement façonné pour séduire la demande internationale.

En aidant les personnes adoptées dans leurs recherches de familles biologiques, les découvertes d'éléments falsifiés dans les dossiers d'adoption, le manque de suivis, les mensonges véhiculés par les agences d'adoption sous l'excuse de lois internes, et maintenant encore sous la NCRC qui devraient servir les

personnes adoptées et non protéger les informations des agences d'adoption.

K.O.A.는 1996년에 설립되었으며, 한국 해외 입양인들의 출생 및 가족 찾기 과정을 지원하기 위해 무료 상담을 제공하는 단체로, 현재도 프랑스어와 영어로 서비스를 제공하고 있습니다.

1991년 이후 30년 이상 동안, 고아원이나 시청 등에서 나온 “잊혀진” 문서들의 발견은 의도적인 관행이었습니다. 이는 국제 입양을 수용 국가에서 받아들일 수 있도록 만들기 위해 입양 기관이 대한민국 행정의 후원 하에 진행한 체계적인 조치였습니다. 한국은 국제적 수요에 맞춰 완벽하게 설계된 이 시스템을 편리하게 외면했습니다.

이 시스템은 입양인이 친가족을 찾는 과정에서 도움을 주는 동시에, 입양 서류의 조작된 정보를 드러내고, 사후 관리의 부재를 보여주며, 입양 기관이 국내법의 명목 아래, 그리고 현재는 입양인을 위해 존재해야 하는 아동권리보장원(NCRC) 아래에서도, 거짓을 계속 유지하도록 이용되었습니다.

Norwegian Korean Rights Group (NKRK)



By now, the national investigation by South Korea has well-documented that many children were adopted without the informed consent of their parents.

According to international law, this constitutes *enforced disappearance*—a situation in which individuals are made to vanish through state or institutional actions, and the truth is concealed. When a child is adopted without consent, the child loses their identity and access to their origins, while the birth parents are deprived of the right to keep their child(ren) or even know where their child

is. This is not only a personal tragedy but a serious violation of human rights. Adoptive parents were often misinformed and drawn into the system without knowing the true background of their adopted child. This shows how widespread and systemic the failures were, but also how many people became victims of unlawful adoption. In Norway alone, more than 6,200 children were adopted from South Korea.

Investigations into unlawful adoptions from South Korea are now underway in Norway, and several other countries have already delivered their reports. This demonstrates that responsibility is both national and international. In the NKRK, we will continue our pursuit of justice, recognition, and healing. Our shared goal is to ensure that forced adoption is understood for what it is: a form of *enforced disappearance* that must never be allowed again.

Les enquêtes nationales menées par la Corée du Sud ont désormais largement documenté que de nombreux enfants ont été adoptés sans le consentement éclairé de leurs parents. En droit international, cela constitue une disparition forcée — une situation dans laquelle des personnes sont rendues introuvables par des actions de l'État ou d'institutions, et où la vérité est dissimulée. Lorsqu'un enfant est adopté sans consentement, il perd son identité et ses origines, tandis que les parents sont privés du droit de garder leur enfant ou même de savoir où il se trouve. Il ne s'agit pas seulement d'une tragédie personnelle, mais d'une grave violation des droits humains. Les parents adoptifs ont souvent été mal informés et intégrés dans le système sans connaître la véritable situation. Cela montre à quel point les défaillances étaient étendues et systémiques, mais aussi combien de personnes deviennent victimes dans chaque adoption illégale. Rien qu'en Norvège, plus de 6 200 enfants ont été adoptés depuis la Corée du Sud.

Des enquêtes sont actuellement en cours en Norvège, et plusieurs autres pays ont déjà publié leurs rapports. Cela démontre que la responsabilité est à la fois nationale et internationale. Au sein de la NKRK, nous poursuivons nos efforts pour obtenir justice, reconnaissance et réparation. Notre objectif commun est de faire comprendre que l'adoption forcée doit être reconnue pour ce qu'elle est : une forme de disparition forcée qui ne doit plus jamais être tolérée.

현재까지 한국의 국가 조사를 통해 많은 아동이 부모의 “충분한 동의 없이” 입양되었다는 사실이 명확히 확인되었습니다. 국제법상 이는 ‘강제실종’에 해당합니다. 강제실종이란 국가 또는 제도적 행위로 인해 개인이 사라지고, 그 진실이 은폐되는 상황을 말합니다. 동의 없이 아동이 입양될 경우, 아동은 자신의 정체성과 출신을 잃게 되며, 부모는 자녀를 양육할 권리뿐 아니라 자녀의 행방을 알 권리까지 박탈당합니다. 이는 단순한 개인적 비극을 넘어 심각한 인권 침해입니다. 입양부모들 또한 종종 잘못된 정보를 제공받아, 실제 배경을 알지 못한 채 이 제도 안으로 끌려 들어갔습니다. 이는 제도의 실패가 얼마나 광범위하고 구조적이었는지를 보여줄 뿐 아니라, 하나의 불법 입양이 얼마나 많은 사람들을 피해자로 만드는지 드러냅니다. 노르웨이에서만 6,200명 이상의 아동이 한국으로부터 입양되었습니다.

현재 노르웨이에서도 조사가 진행 중이며, 여러 국가들은 이미 보고서를 발표했습니다. 이는 책임이 국내와 국제 양측에 있음을 보여줍니다. NKRK는 정의, 인정, 그리고 치유를 향한 노력을 계속해 나갈 것입니다. 우리의 공동 목표는 강제적 입양이 무엇인지 — 절대로 다시는 허용되어서는 안 되는 ‘강제실종’의 한 형태임을 — 분명히 하는 것입니다.

Swedish Korean Adoptees' Network (SKAN)



We are happy to see that South Korea, unlike Sweden, has ratified the International Convention for the Protection of All Persons from

Disappearance (ICPPED).

For several decades we, the adopted people, have not been treated like real persons. Instead, we have been shipped away like cargo in order to generate money for the South Korean state and to satisfy the receiving countries' endless demand for children.

Time is running out! The adoptees are getting older and our original family members are passing because of age. The perpetrators are also getting older. Unless Korea and the receiving countries take action NOW, there will be no justice for adoptees and our families, and no accountability for the perpetrators.

SKAN is kindly requesting the South Korean national assembly to listen to the Truth and Reconciliation Commission as well as the Swedish adoption investigation, and start enforcing the ICPPED on wrongful adoptions. Only by holding the perpetrators responsible for their actions, can the adopted people and our families receive some kind of justice for the horrible crimes we are victims of.

Nous nous réjouissons de constater que la Corée du Sud, contrairement à la Suède, a ratifié la Convention internationale pour la protection de toutes les personnes contre les disparitions forcées (CIPPDF).

Pendant plusieurs décennies, nous, les personnes adoptées, n'avons pas été traitées comme de véritables êtres humains. Nous avons plutôt été expédiés comme du fret afin de

générer des revenus pour l'État coréen et de satisfaire la demande incessante d'enfants dans les pays d'accueil.

Le temps presse! Les personnes adoptées vieillissent, et nos familles d'origine disparaissent en raison de l'âge. Les responsables vieillissent eux aussi. À moins que la Corée et les pays d'accueil n'agissent MAINTENANT, il n'y aura ni justice pour les personnes adoptées et nos familles, ni responsabilité pour les auteurs des faits.

SKAN demande respectueusement au Parlement coréen d'écouter la Commission vérité et réconciliation ainsi que l'enquête suédoise sur l'adoption, et de commencer à appliquer la CIPPDF aux adoptions irrégulières. Ce n'est qu'en tenant les responsables pour leurs actes que les personnes adoptées et nos familles pourront espérer recevoir une forme de justice pour les crimes graves dont nous sommes victimes.

한국이 스웨덴과 달리 모든 사람의 강제실종으로부터의 보호를 위한 국제협약(ICPPED)을 비준한 점을 매우 기쁘게 생각합니다.

수십 년 동안 우리 해외입양인들은 온전한 한 인간으로 대우받지 못했습니다. 우리는 마치 화물처럼 해외로 보내졌고, 이는 한국 국가에 수익을 창출하고 아동에 대한 수요가 끝없는 수령국들을 만족시키기 위한 것이었습니다.

시간이 얼마 남지 않았습니다! 입양인들은 나이가 들고 있으며, 우리의 원가족들도 고령으로 세상을 떠나고 있습니다. 가해자들 또한 고령화되고 있습니다. 지금 한국과 수령국들이 행동하지 않는다면, 입양인들과 우리 가족들에게는 어떠한 정의도 주어지지 않을 것이며, 가해자들에 대한 책임 추궁도 이루어지지 않을 것입니다.

SKAN은 한국 국회가 진실·화해위원회와 스웨덴의 입양 조사

결과에 귀 기울이고, 잘못된 입양 사건에 ICPPED를 적용할 것을 정중히 요청합니다. 가해자들에게 책임을 묻는 것만이 우리가 피해자로서 겪어온 이 심각한 범죄에 대해 입양인들과 우리의 가족들이 어떤 형태로든 정의를 받을 수 있는 길입니다.

Swedish Korean Rights Group (SKRG)



The Swedish Korean Rights Group is a nationwide Swedish association for adoptees from South Korea. The association works to ensure the rights of Korean adoptees and their

children to truthful documentation, identity, and the possibility of dual citizenship. The association aims to advocate for the rights of adopted Koreans to truth and reconciliation regarding adoption processes, as well as the right to support and assistance in searching for their origins. SKRG is a sister organization to the DKRG and part of the worldwide network of adoptee organizations working to shed light on the urgency of enforced disappearance.

In 2021 The Swedish Government appointed the Inquiry *"Sweden's intercountry adoption activities – lessons learned and the way forward"* in 2021 after reports of irregularities in transnational adoptions as illegal adoptions, human trafficking, adoptions without voluntary and informed parental consent, false or incorrect documentation, missing consent forms, missing information essential for adoptees' right to know their origins.

Some adoptions to Sweden fall within the definition of enforced disappearance, and ratifying the ICPPED would strengthen obligations to investigate and ensure remedies. These include cases in which children were taken from hospitals and parents were told the

child had died, children disappeared while in temporary care at orphanages or hospitals, and children who were abducted under other circumstances.

Sweden signed the convention in 2007 but has not ratified it, unlike neighboring Norway, Denmark, and Finland. SKRG supports the Inquiry's recommendation for Sweden to ratify the ICPED enabling Sweden to properly investigate and address adoptions that may involve enforced disappearance.

Swedish Korean Rights Group est une association nationale suédoise pour les personnes adoptées en provenance de Corée. L'association œuvre pour garantir aux adoptés coréens et à leurs enfants le droit à une documentation exacte, à leur identité et à la possibilité de bénéficier d'une double citoyenneté. Elle vise à défendre le droit des adoptés coréens à la vérité et à la réconciliation concernant les procédures d'adoption, ainsi que leur droit à un soutien et à une assistance dans la recherche de leurs origines. SKRG est une organisation sœur de DKRG et fait partie du réseau mondial d'organisations d'adoptés travaillant à mettre en lumière l'urgence de la disparition forcée.

En 2021, le gouvernement suédois a créé l'enquête intitulée « Les activités d'adoption internationale en Suède – enseignements tirés et perspectives » à la suite de signalements d'irrégularités dans les adoptions transnationales, telles que des adoptions illégales, de la traite d'enfants, des adoptions réalisées sans consentement parental volontaire et éclairé, des documents faux ou incorrects, des formulaires de consentement manquants, ainsi que des informations essentielles manquantes pour le droit des adoptés de connaître leurs origines.

Certaines adoptions vers la Suède entrent dans la définition de la disparition

forcée, et la ratification de la convention renforcerait les obligations d'enquête et de réparation. Cela inclut les cas où des enfants ont été retirés d'hôpitaux et où les parents ont été informés que l'enfant était décédé, des enfants disparus alors qu'ils étaient en soins temporaires dans des orphelinats ou hôpitaux, ainsi que des enfants enlevés dans d'autres circonstances.

La Suède a signé la convention en 2007 mais ne l'a pas ratifiée, contrairement à ses voisins la Norvège, le Danemark et la Finlande. SKRG soutient la recommandation de l'enquête visant à ce que la Suède ratifie la CIEDF (Convention internationale pour la protection de toutes les personnes contre les disparitions forcées), ce qui permettrait au pays d'enquêter correctement et de traiter les adoptions pouvant impliquer une disparition forcée.

****Swedish Korean Rights Group(스웨디시 코리안 라이츠 그룹, SKRG)****는 스웨덴 전역을 대상으로 활동하는 한국 입양인을 위한 단체입니다. 이 협회는 한국 입양인과 그 자녀가 정확한 기록, 정체성, 그리고 이중국적을 가질 권리를 보장받도록 활동합니다. 또한 입양 과정과 관련하여 진실과 화해를 요구할 권리, 그리고 자신의 출생 정보를 찾는 과정에서 필요한 지원과 도움을 받을 권리를 옹호하는 것을 목표로 하고 있습니다. SKRG는 DKRG의 자매 단체이며, 강제실종 문제의 긴급성을 알리기 위해 활동하는 전 세계 입양인 단체 네트워크의 일원입니다.

2021년, 스웨덴 정부는 “스웨덴의 국제 입양 활동 – 교훈과 향후 방향”이라는 조사위원회를 구성했습니다. 이는 국제 입양 과정에서 발생한 불법 입양, 인신매매, 부모의 자발적·충분한 동의 없는 입양, 잘못되거나 허위의 서류, 동의서 누락, 입양인이 자신의 출생 정보를 알 권리에 필수적인 정보 누락 등 불규칙 사례들이 보고된 이후의 조치였습니다.

스웨덴으로의 일부 입양은 강제실종의 정의에 해당하며, 협약을 비준할 경우 이러한 사례를 조사하고 피해를 구제할 의무가 강화됩니다. 여기에는 아이가 병원에서 데려가졌으며 부모에게 사망했다고 거짓 통보된 사례, 고아원이나 병원에서 임시 보호 중 사라진 사례, 그리고 기타 상황에서 납치된 아이들이 포함됩니다.

스웨덴은 2007년에 협약에 서명했지만, 인접 국가인 노르웨이, 덴마크, 핀란드와 달리 아직 비준하지 않았습니다. SKRG는 스웨덴이 ICPPED(모든 사람의 강제실종으로부터의 보호에 관한 국제협약)를 비준하여 강제실종과 관련된 입양을 제대로 조사하고 처리할 수 있도록 해야 한다는 조사위원회의 권고를 지지합니다.

Swiss Ibyang



“Enforced disappearance is one of the gravest violations of human rights. It deprives a person not only of their freedom, but also of their identity and very existence. Faced with this absolute injustice, our commitment is part of a collective effort for truth, justice, and recognition of the victims of state violence—particularly those related to international adoptions in South Korea.

Recent investigations and testimonies have shed light on decades of silence, injustice, and impunity. The State has a duty to acknowledge the truth, to assume responsibility, and to ensure that every disappearance is the subject of a full, independent, and transparent investigation. Justice cannot be delayed: it is a fundamental right for all victims and their families.

We call for the effective implementation of the recommendations issued by truth and justice bodies. This requires opening the archives, officially recognizing the victims, prosecuting those responsible, and establishing concrete measures of reparation. Without action from the State, the wounds remain open and impunity persists. To unite for truth and justice is to refuse oblivion and to carry the voices of those whom enforced disappearance sought to erase. Memory is an act of resistance, and justice is a moral and political imperative.”

“La disparition forcée est l’une des violations les plus graves des droits humains. Elle prive une personne non seulement de sa liberté, mais aussi de son identité et de son existence même. Face à cette injustice absolue, notre engagement s’inscrit dans une démarche commune pour la vérité, la justice et la reconnaissance des victimes de violences d’État — notamment celles liées aux adoptions internationales en Corée.

Les enquêtes et témoignages récents ont mis en lumière des décennies de silence, d’injustice et d’impunité. L’État a le devoir de reconnaître la vérité, d’assumer sa responsabilité et de garantir que chaque disparition fasse l’objet d’une enquête complète, indépendante et transparente. La justice ne saurait être différée : elle constitue un droit fondamental pour toutes les victimes et leurs familles.

Nous appelons à la mise en œuvre effective des recommandations formulées par les instances de vérité et de justice. Cela implique l’ouverture des archives, la reconnaissance officielle des victimes, la poursuite des responsables et la mise en place de réparations concrètes. Sans action de l’État, les blessures demeurent ouvertes et l’impunité perdure. S’unir pour la vérité et la justice, c’est refuser l’oubli et porter la voix de celles et ceux que la disparition forcée a voulu effacer. La

mémoire est un acte de résistance, et la justice un impératif moral et politique.

“강제실종은 가장 중대한 인권 침해 중 하나입니다. 이는 개인에게서 자유뿐 아니라 정체성과 존재 자체까지 빼앗습니다. 이러한 절대적 부정의에 맞서 우리의 노력은 진실, 정의, 그리고 국가 폭력의 피해자—특히 한국의 국제입양과 관련된 피해자—를 위한 공동의 실천 속에서 이루어지고 있습니다.

최근의 조사와 증언들은 수십 년간 이어져 온 침묵, 불의, 그리고 면책을 드러냈습니다. 국가는 진실을 인정하고 책임을 다하며, 모든 실종 사건에 대해 완전하고 독립적이며 투명한 조사가 이루어지도록 보장할 의무가 있습니다. 정의는 미뤄져서는 안 됩니다. 이는 모든 피해자와 유가족의 기본적 권리입니다.

우리는 진실·정의 관련 기구들이 제시한 권고 사항의 실질적 이행을 촉구합니다. 이를 위해서는 기록 보관소의 공개, 피해자에 대한 공식적 인정, 책임자 처벌, 그리고 실질적인 배상 조치의 마련이 필요합니다. 국가의 조치 없이는 상처는 치유되지 못한 채 남아 있고 면책은 지속될 것입니다. 진실과 정의를 위해 연대한다는 것은 망각을 거부하고 강제실종이 지우려 했던 이들의 목소리를 드러내는 일입니다. 기억은 저항의 행위이며, 정의는 도덕적·정치적 책무입니다.”